VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the

United States Court of Appeals

For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Div.

Honorable James B. Moran, Judge Presiding.

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101 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

Chicago, Illinois
Friday, April 22, 1960
12:30 o'clock, p.m.

Court convened pursuant to a recess.

PRESENT:

Mr. Thomas C. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of Defendants John L. Keeshin and Railroad Transfer Service;
102 Mr. Joseph C. Owens,
on behalf of Defendant Hugh W. Cross;
Mr. Martin J. Keating,
on behalf of Defendant The New York Central Railroad Company;
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

103 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By Mr. Thompson: If the Court please, after careful consideration of the generous offer of my brother McCon-

nell, we cannot accept it, and we ask that the case proceed to trial in the normal course.

By the Court: Send for a jury. Two o'clock for trial.

By Mr. McConnell: I asked leave to go to a funeral. I wonder if we can start this case Monday morning?

By the Court: I can't be harsh to you on that point. I am not going to do it. Monday morning. That is not your fault or anybody else's fault. Monday morning at eleven o'clock. I have a long call, and I don't want to keep you waiting.

Gentlemen, I have lists of the jurors.

By Mr. Freeman: You have given that to us.

By the Court: I am going to hold the same jury until Monday morning.

(Thereupon, an adjournment was taken to 11:00 o'clock, a.m., on Monday, April 25, 1960.)

104 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Monday, April 25, 1960,
11:00 o'clock a.m.

Court convened pursuant to an adjournment.

PRESENT:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;
Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;
105 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

106 And thereupon the following further proceedings were had herein:

By the Clerk: No. 56 C 323. Parmelee Transportation Company v. John L. Keeshin, et al. The case on trial.

By the Court: Send for the jury.

Swear in the jurors.

(The jurors were sworn to answer questions.)

By the Court: I have excused one juror named Ann Arado. There was another one.

By the Marshal: Another one coming to work this morning, Georgia Malone, was hurt.

By the Court: All right.

By the Marshall: Carrera, Bonnema, Beck, Andel, Berlin, Frahm, Kula, Delgado, Henderson, Hill, Kasner, Kisley.

107 By the Court: The plaintiff will please introduce his case and the parties, and then I will talk to them for a few minutes.

By Mr. Thomas McConnell: Pardon me, your Honor? I didn't hear you.

By the Court: The plaintiff will please introduce the case and the parties, and then I will address the jurors.

By Mr. McConnell: Ladies and gentlemen, this is a case which is brought under the Federal Anti-Trust Laws, Sections 1 and 2 of the Sherman Act to be more specific. It is brought by the Parmelee Transportation Company, which is a Delaware Corporation, but which is authorized

to do business and has been doing business here in the State of Illinois.

The defendants are John L. Keeshin, who is the chief stockholder, probably the only stockholder, I guess, of his company which is doing transfer business here in Illinois, which I will refer to in a moment.

Hugh W. Cross; I don't know what his business is at the moment, but he was formerly a member of the Interstate Commerce Commission and was at one time chairman of that Commission. I don't know what he is doing now.

108 Howard E. Simpson is president of the Baltimore & Ohio Railroad.

Paul E. Feucht is former president of the Chicago & Northwestern Railroad.

Wayne A. Johnston is president of the Illinois Central Railroad.

Fred G. Gurley, another individual defendant, was president of the Atchison, Topeka and Santa Fe Railroad, which we usually call the Santa Fe.

Then we get to the corporations which are defendants.

Railroad Transfer Service, Inc. is a Delaware corporation which was organized by Mr. Keeshin, individual defendant, to carry on the railroad transfer business, transporting baggage from one terminal to another in the City of Chicago. That is a corporation of which he is the principal if not the only stockholder.

Then there is the Atchison, Topeka and Santa Fe Railway Company, a Kansas corporation, which as you know, is a railroad.

Then there is the defendant, the Baltimore and Ohio Railroad Company, which is a Maryland corporation that comes into the City of Chicago through the B&O terminal down on Wells Street.

109 Then there is the Chicago and North Western Railway, which is a Wisconsin corporation; the Illinois Central Railroad Company, an Illinois corporation; the New York Central Railroad Company, an Illinois, New York, Ohio, Indiana, Pennsylvania and Michigan corporation.

Then there is the Pennsylvania Railroad Company, which is a Pennsylvania corporation.

Then there is Western, and then there is a John Doe defendant, which is sort of a catch-all of people who might be conspirators or the proofs might find to be conspirators and so designated.

Is that as far as you want me to go?

110 By the Court: The names of the lawyers, please, for both sides.

By Mr. McConnell: Well, the plaintiff is represented here by myself as an individual. I don't think my firm name is in this. Thomas C. McConnell is my name.

Then there is Lee Freeman, who is not here this morning, but will be here tomorrow; and Mr. John Stevens who sits at my left. None of our firms have entered their appearances here, just individual lawyers.

Assisting me is Mr. John Borst, and my son, Francis J. McConnell.

On the other side at the other table is former Judge of our Supreme Court, Floyd Thompson, and Mr. Philip Tone, seated behind him. Mr. Meserow, seated across the table. Then Mr. Joseph Owens who represents Mr. Cross, I believe.

That is all, I believe.

By Mr. Tone: And Mr. Keating, representing the New York Central.

By the Court: All right.

By Mr. McConnell: I don't know that I can name all

the members of these firms. I don't know that I know them.

111 By the Court: I don't either, all of them.

I am going to talk to all of you back there and in the jury box, so you can hear me, I hope.

This is a civil case, as counsel told you, commonly known as an anti-trust case, as distinguished from a criminal case where the burden on the Government is to prove a defendant guilty beyond a reasonable doubt. In a civil case, the plaintiff is required to prove his side or their side by the preponderance or greater weight of the evidence. That means if the scale were to have the evidence of each side, which ever one tips over has the preponderance of the evidence.

You have heard the names of the parties on both sides and also the lawyers. Are any of you familiar with either side or any of the parties in this case or any of the lawyers?

112 By Juror Jay L. Mann: I am, sir.

By the Court: What is your name?

By Juror Jay L. Mann: Jay L. Mann.

By the Court: Where do you live?

By Juror Jay L. Mann: 723 Ashland Avenue, Wilmette.

By the Court: What is your acquaintanceship?

By Juror Jay L. Mann: We do business with all the railroads that were mentioned, the majority of them, Highland Electrical Supply; and Jack Keeshin's daughter is married to Lee Gatner, who is a personal friend of mine.

By the Court: All right. We will get to you later. Your name, please?

By Juror Victor J. Georgen: Victor J. Georgen, with the Railroad Express. I am familiar with Mr. Collins, who is assistant general manager of Keeshin.

By the Court: All right. We will get to you later. Do any of you have any reason why you cannot sit in fair judgment in this type of case?

We are going to try this case under the rules of our court on just one issue to start off with, and that is public injury. It will be incumbent upon the plaintiff to establish that issue by the preponderance or greater weight of the evidence, and you are not to be concerned with any
113 other issues in the case except whether or not the public has sustained any injury in this case.

Is that clear? No other issues are to be decided or tried by you at this time.

You are the sole judges of the facts in the case. No one, not even I, has any right or intent to intimate to you or direct you or advise you how to decide on the facts in this case. Nothing that I say or do will have any such tendency to influence your judgment in the least on the facts in the case.

On the other hand, I am the sole judge of the law in the case, and it is incumbent upon you to take the law as I give it to you. Is that clear? It doesn't mean that I am infallible, but that is my job, and I will try to give you the law as I see it, that is fair and just.

114 Now the lawyers are going to be permitted to ask you some questions about your qualifications as jurors. It doesn't mean that they are going to try to pry into your personal affairs. They have a right, under the law, to look into your inner thinking to see whether you have some notions, some attitudes that may or may not influence your judgment for or against them unduly. So I don't want you to feel any personal affront to either of the lawyers who are going to question you.

In the course of the trial, the lawyers are going to make objections to some questions, maybe some answers, and I am going to rule upon those objections.

First, I want you to know that they have a perfect right to make those objections. It is part of their duty to try the case, and that is part of the trial, part of our system of jurisprudence. I don't want you to feel any personal affront in the fact that I sustain or overrule the objection or their making one or more or as many as they wish. They have a right to, and my rulings do not indicate any judgment on the outcome of the case. I am merely calling the shots as I see them on that particular objection or that particular motion. Is that clear?

115 Now if something is said or done that has no place in the record according to my best judgment, I am going to say it may be stricken from the record. That means that I have no way of erasing it from your minds or taking it out of the record physically, because it has been said and done. So the best I can do is ask you to please forget about it. If I say it may be stricken, you have got to disregard it as though it had never been said in the record. Can you do that? That is the fair way of conducting a lawsuit.

Now, is there any reason why any one of the jurors here cannot give both sides here a fair and impartial trial? That is the primary purpose in the administration of justice, to be fair to both sides, and to give them an absolutely fair and impartial trial.

Have any of you had any experience with any of the parties or in any matter that would prejudice you for or against either side?

Do any of you have any relatives employed by any of the railroads besides those two that I have talked to?

Now, one of the most important things in the trial of a lawsuit is that we must permit no sympathy or prej-
116 udice to influence our judgment one way or the other, for or against either side. Is that clear?

Now, you are to consider only the testimony given to you from the witness stand, which the Court allows to stand as valid testimony, and that is the testimony from this stand under oath. Nothing else is to influence your judgment.

Counsel have a right to comment upon it in their final deliberations, to sum it up, and what they say is their own opinion, but it is not the testimony, either in the opening statement or in the final arguments.

You are only to be bound by what is given to you under oath from the witness stand as you have heard it, and you are the sole judges of the credibility of the witnesses. You yourself are to determine which witness is telling the truth and which witness is lying, or how much of it is truthful and how much of it is false, and you are to give it that much weight and credibility as, in your honest judgment, they are entitled to. Is that clear?

You have taken into consideration the corroboration by other credible evidence. That is important. Is that clear?

You are not to discuss this matter with anyone, not even among yourselves, and you are to permit no one to talk
117 to you about this case in the elevator, the lobby, or anywhere on your way home or at your homes. If anybody talks to you about it, I want you to report him to me.

118 No one must influence your judgment or try to in the least possible manner. Is that clear?

I don't want you to discuss this case among yourselves until all the evidence is in, until my instructions to you are given, until counsel have made their final arguments and until you will have retired to deliberate on the final judgment of the case. Is that clear?

There is a good reason for that. Some juror may have come to an earlier decision than others, but he or she

hasn't heard all the evidence. It won't be fair to discuss a case from that point until all the evidence is in, until you have had the benefit of my instructions on the law, until you have had the lawyers sum it up before you, so let's not discuss it, if you please, among ourselves, among yourselves, or with anyone else until you will have retired into the jury room for your final deliberations. Is that clear?

This is a great responsibility under our system of jurisprudence. You are sharing the administration of justice with the Court. There are very few countries in the world that have that privilege, and it is a serious responsibility.

It will require all the integrity and honesty and devo-
119 tion to the American ideals to be fair and impartial to both sides. Can you do that?

All right; you may proceed with your examination.

By Mr. McConnell: If the Court please, with all due deference to your Honor's statement, I think something should be said to this jury about what this case is about.

I would like to do that, but I don't want to run afoul of any of your rulings.

By the Court: You may do that on the question, on the issue as I have limited it.

By Mr. McConnell: Can we discuss this outside the presence of the jury?

By the Court: Yes, sure. All right; let's go in chambers.

(And thereupon the following proceedings were had in chambers outside the presence and hearing of the jury.)

By Mr. McConnell: Let me say at the outset here, I am not interested in getting into any troubles back and forth between Court and counsel. I just want to be able to make a record here, because it is obvious this case is being—we

are doing all we can to set it up as a test case on this
120 particular issue, but I think that within the scope of your Honor's ruling that I should be allowed to tell the jury at least what kind of business we are dealing with.

By the Court: Yes; I have no objection.

By Mr. McConnell: That the business is carrying passengers, baggage, coupons, and so forth.

By the Court: There is no question about that.

By Mr. McConnell: Otherwise, I don't know how I can examine them intelligently what this is about.

By the Court: You may describe to them the nature of the business of the plaintiff and the defendant and the type of work they are doing and anything except the conspiracy which resulted in this alleged violation.

By Mr. McConnell: That is, I can't mention conspiracy in the statement, or monopoly?

By the Court: Not on this particular element of proof.

By Mr. McConnell: Well, that is some help to me. At least it tells the jury.

By the Court: I never intended to withhold from the jury any such issue. Those are the facts upon which you are trying to prove damages or public injury.

By Mr. McConnell: All right; that clarifies it.

By Mr. Meserow: Wait a minute, now. After Mr.
121 McConnell makes an opening statement, I presume we would like to make a statement, too.

By the Court: This is not an opening statement.

By Mr. Thompson: This is not an opening statement.

By the Court: This is just for the qualification of the jurors.

(And thereupon the following proceedings were had in open court in the presence and hearing of the jury.)

122 By Mr. McConnell: If your Honor please, ladies and gentlemen, this is not an opening statement of

the case or anything of that kind. It is just a preliminary statement so that you people will know at least in bare outline what we are talking about in this case so you can answer the questions as to your qualifications or as to whether this kind of a case is one which you can or cannot fairly deal with.

This case was originally brought under Sections 1 and 2 of the Sherman Act which I am not going to define.

Under a provision of the rules of our court, his Honor, as he has told you, has singled out for what we might call a pre-determination, an issue which is characterized and described by the Court as one of public injury.

I think, even before we can deal intelligently with whether you think you can properly or fairly try that issue, that you have to know what the nature of the business is that we are talking about here.

There was a committee of six railroads, which are six railroads made defendants, and they were appointed by a terminal association composed of twenty-one railroads, which are practically all the railroads which use terminals here in the City of Chicago.

As you probably all know, Chicago is unique in respect to the railroad business. I don't know of any other city like it, where railroads come in from the east or the south or the west and end here, so that when a passenger decides to go by railroad from New York to San Francisco, he takes a railroad that ends him in Chicago, and then he has to get from one railroad station to another, depending on which route he is traveling, and take another line out of Chicago on his journey further west.

The subject that we are dealing with here in this lawsuit, even on this limited issue, would be the commerce which is involved in carrying that passenger by maybe two or maybe even three railroads, from one section, let's

say the eastern section, to the western section of the country.

To take care of that situation, the railroads for a period of some hundred years had worked out a system with the Parmelee company, which is the plaintiff in this case, whereby for a coupon, which was attached to the ticket which was sold that interstate traveler, he would not only get his transportation into Chicago and out of Chicago,

but he would be taken, together with his baggage in
124 exchange for this coupon put on his ticket, across the

City of Chicago or wherever he had to go from one station to the other so he didn't have to pay a taxi fare or any other fare to get him from the station which he ended up in, in Chicago, to the station out of which he was going from Chicago.

That business, and you have probably all used it, was a system of cabs, in the old days with horses. I remember when I first started using that system they didn't have horses in those days, but they had automobiles, and that evolved into a system of limousines, and now they have station wagons, I think, that are used.

It is a simple business of carrying passengers and baggage from one station to another as part of a journey whereby usually more than one railroad is used.

That involves railroad employees. It involves employees of the transfer company itself. It involves your connections with possibly any one of these twenty-one railroads who are members of the association, because this particular committee that we are talking about was a committee appointed by all of those twenty-one railroads.

As you can surmise, I assume, this lawsuit arose out of the fact that one transfer agent was superseded by another,

and the issues which we allege in our complaint under
125 Sections 1 and 2 we are not trying at the moment under the Judge's ruling.

There is no need, and I can't discuss those issues with you under the Court's ruling, and so if there is anything involved in that, I don't know what we will do with that, except I am not free to discuss them.

The only thing we have to discuss here, I guess, is whether or not the public is damaged by having Mr. Keeshin's company supercede the Parmelee Company.

With that in mind, I would like to examine you people individually on various qualifications here.

By the Court: May I suggest, Mr. McConnell, that you examine them four at a time as a panel, if you please, the first four, and then we will go on with the next four.

By Mr. McConnell: Very good.

I am going to ask, if I may, your Honor, a few preliminary questions which involve everybody so I won't have to ask them over and over again.

By the Court: You may. That goes to all of you, ladies and gentlemen, in the box and also in the seats.

By Mr. McConnell: These are the railroads that are involved in this terminal association that I spoke to you about a moment ago. The first on the list is the 126 Atchison, Topeka and Santa Fe Railway Company, and then there is the Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railway Company, the Chicago and Eastern Illinois Railroad Company, the Chicago and North Western Railway Company.

The Chicago, Burlington and Quincy Railway Company, the Chicago Great Western Railway Company, the Chicago, Indianapolis and Louisville Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago, North Shore and Milwaukee Railway, the Chicago, Rock Island and Pacific Railroad Company, the Chicago, South Shore and South Bend Railroad.

The Erie Railroad Company, the Grand Trunk Western Railroad Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad, the Minneapolis, St. Paul and Sioux Ste. Marie Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company, the Wabash Railroad Company.

Have any of you people had any business dealings, aside from just as passengers, with any of those companies?

By a Juror: I was employed by the Illinois Central
127 Railroad some years ago back during the war, as a weigh master and also as a yard clerk.

By Mr. Thomas McConnell: Can we have that juror excused, your Honor?

By the Court: How long ago was that?

By a Juror: During the war years, 1942 and 1943.

By the Court: Would that in any way influence your judgment now for or against the company?

By a Juror: No.

By the Court: That is the answer.

By Mr. McConnell: We will excuse him for cause.

By the Court: He may be excused.

By Mr. McConnell: I mean a peremptory challenge to that juror.

By the Court: All right; he is excused.

By the Marshal: Wasserman.

By the Juror: I grabbed numbers for the Grand Trunk Railroad about forty years ago.

By Mr. McConnell: And your name is?

By Mr. Hilb: Harry A Hilb.

128 By Mr. McConnell: I will return to your Honor's suggestion of the panel questions.

MICHAEL A. CARRERA, a member of the panel of veniremen, having been first duly sworn, was examined to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. The first gentleman in the first row, your name?

A. Michael A. Carrera.

Q. What is your business or occupation?

A. I work for the Gazoolo Drug and Chemical Company.

Q. How long have you worked for that company, Mr. Carrera?

A. I have been there about nine years.

Q. Do you know of anything in your experience that would in any way make it impossible for you to give these litigants a fair trial?

A. No, sir.

Q. You never had any troubles of any kind with the railroad?

A. No, sir.

Q. Or with the Parmelee company?

A. No.

Q. Do you know anybody working for these railroads?

129 A. Well, it seems to me one of my nephews works for the Chicago & North Western Railroad. However, I am not acquainted with the type of work that he does, nor do I know exactly where he works.

Q. What is the nature of this chemical company for which you work?

A. Well, we service drug stores, hospitals and clinics in the Chicago area with their drugs, and we also sell sundries, cosmetics and virtually everything that is sold in a drug store.

Q. Do you know whether you do any business with the railroads here or with the terminals?

A. No, I really don't. Most likely not.

Q. Have you ever been in any litigation of any kind?

A. No, sir.

WILLIAM P. BONNEMA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. The next gentleman in the front row, your name?

A. William Bonnema.

130 Q. What is your business or occupation, Mr. Bonnema?

A. I am a wood machine operator in a sash and door mill.

Q. How long have you been engaged in that occupation?

A. Forty years.

Q. Do you have your own business?

A. No, sir.

Q. What company do you work with?

A. I have worked all those forty years for the Sterling Lumber Company.

Q. Have you ever been in any litigation?

A. No, sir.

Q. Do you know anybody with any of these railroads?

A. No, sir.

Q. Do you know Mr. Keeshin?

A. I do not, no, sir.

Q. Do you know the plaintiff, Parmelee Corporation, in any way?

A. No, sir.

Q. You have never done business with them?

A. No, sir.

Q. Where is your place of business located?

A. 119th and Halsted Street.

Q. Do you know of any reason at all why you can't
131 give both sides in this case a fair trial?

A. I do not.

Q. Have you ever had occasion to form any opinion as to the anti-trust laws, so-called?

A. No, sir.

ROBERT KULA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. The next gentleman in the back row, your name, please?

A. Robert Kula.

Q. What is your business or occupation?

A. An office clerk with the RCA Victor Distributing Corporation.

Q. What is the nature of your business, I mean what you do there?

A. I handle the parts inventory.

Q. Have you ever been involved in any litigation?

A. I don't understand what that means, to be truthful with you.

132 Q. Lawsuits, just like we are in now.

A. No, sir.

Q. Not just like what we are in now, but the same general idea, where somebody sues you or where you sue somebody else.

A. No, sir.

133 Q. How long have you been working for RCA?

A. Approximately five years, sir.

Q. I take it you have had no connection of any kind with any of the railroads involved in this case?

A. No, sir.

Q. Or the Parmelee Company?

A. No, sir.

Q. Or Mr. Keeshin's company?

A. No, sir.

Q. Do you know anybody working for the railroads?

A. Not to my knowledge.

Q. Do you do business with any of the railroads as far as you know?

A. I really don't know, sir.

Q. Is there any reason at all of any kind of character or description which would lead you to believe you couldn't give both sides in this case a fair trial?

A. No, sir.

ELLA J. DELGADO, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. Thomas McConnell.

Q. The lady in the back row, what is your name?

134 A. Ella J. Delgado.

Q. What is your business or occupation?

A. I am employed as secretary and general office worker.

Q. With what company?

A. The Surty Manufacturing Company, Incorporated.

Q. What kind of business do they do?

A. They manufacture safety equipment for industrial machines.

Q. Have you ever been involved in any lawsuits of any kind?

A. No, sir.

Q. Do you know anybody working for these different railroads that I named?

A. No, sir.

Q. Does your company do business with these railroads or do you know?

A. Yes, they use them to transport their material at times.

Q. What would be the nature of that work?

A. Well, just shipping our equipment that we sell.

Q. You use them as a carrier?

A. As a carrier, yes, a common carrier.

135 Q. Do you know of any reason at all why you couldn't give both sides in this case a fair trial?

A. No, sir, I do not.

Q. How long have you worked with this company?

A. Sixteen and a half years.

Q. I take it you never worked for any of the railroads?

A. No, sir.

Q. Or the terminals?

A. No, sir.

Q. With whom does your husband work?

A. Kraft Foods, Incorporated.

Q. What is his position there? Can you tell us that?

A. He works in the production department, various departments.

Q. He is not a salesman?

A. No.

By Mr. McConnell: I will tender the four jurors.

By Mr. Thompson: Mr. Carrera, do you still live at 4437 North Whipple?

By Mr. Carrera: Yes, sir.

By Mr. Thompson: Is this your first experience as a juror in the Federal Court?

136 By Mr. Carrera: Well, I have had two other experiences during this period.

By Mr. Thompson: This is your first panel service?

By Mr. Carrera: Yes, that is true.

By Mr. Thompson: Are you a chemist?

By Mr. Carrera: No, sir, I am not.

By Mr. Thompson: What is your work?

By Mr. Carrera: I work in the office where we do the processing of orders, incoming orders, take telephone orders, and also in the buying of the pharmaceuticals which we sell.

By Mr. Thompson: Is that in the sales department or the records department or what?

By Mr. Carrera: No, that would be in the sales department.

By Mr. Thompson: All right.

Parmelee Transportation Company, which is the plaintiff in this case, is a company of diverse and sundry businesses. Do you have any connection with it in any wise that you know of as a stockholder or otherwise?

By Mr. Carrera: No, sir.

By Mr. Thompson: Do you know Morris Markin, who either directly or indirectly owns most of this company?

By Mr. Carrera: No, sir.

137 By Mr. Thompson: You have no connection with the Yellow Cab Company which is affiliated?

By Mr. Carrera: No.

By Mr. Thompson: Or the Checker Cab Company, which is affiliated?

By Mr. Carrera: No, sir.

By Mr. Thompson: As far as you know, you have no relations with the plaintiff in any wise, directly or indirectly?

By Mr. Carrera: No, sir.

By Mr. Thompson: And you have had no litigation with anybody?

By Mr. Carrera: No, sir.

By Mr. Thompson: With any of these railroads or anybody else?

By Mr. Carrera: No, sir.

By Mr. Thompson: Mr. Bonnema, you still live at 1722 South Sangamon?

By Mr. Bonnema: That is right, yes.

By Mr. Thompson: Without repeating these names, you have no connection as a stockholder or otherwise with any of the Parmelee Transportation Company or any of its affiliates or subsidiaries?

By Mr. Bonnema: No, sir, I have not.

138 By Mr. Thompson: I assume you know nothing about this lawsuit?

By Mr. Bonnema: I do not. Just what I saw in the paper, an item here and there, but I know nothing about it. I know nothing about it, only what I see an item in the paper.

By Mr. Thompson: You saw an item in the paper in the last few days, you mean?

By Mr. Bonnema: Yes, that is right.

By Mr. Thompson: That didn't tell you much about the lawsuit?

By Mr. Bonnema: No.

By Mr. Thompson: It just told you about some procedural matters?

By Mr. Bonnema: Yes.

By Mr. Thompson: Do you remember reading about this case four or five years ago when the difficulty out of which this lawsuit arises took place?

By Mr. Bonnema: No, sir, I do not.

By Mr. Thompson: So you have no notion as to who is right or wrong in this?

By Mr. Bonnema: No.

By Mr. Thompson: The same thing is true with you, Mr. Carrera?

139 By Mr. Carrera: Well, I did read a little something about it in the last few days.

By Mr. Thompson: I know, but that didn't tell you anything about what the controversy is about?

By Mr. Carrera: No.

By Mr. Thompson: It told you about some procedural matters here in court?

By Mr. Carrera: That is right, yes.

By Mr. Thompson: It gave you no notion as to who is right or wrong, did it?

By Mr. Carrera: No.

By Mr. Thompson: Do you remember reading about it, back in 1955, when the acts out of which this litigation arises took place, the transactions?

By Mr. Carrera: No, sir, I do not.

By Mr. Thompson: You have no recollection of that?

By Mr. Carrera: No, sir.

By Mr. Thompson: So far as you know, you have no preconceived notions about how this case ought to be decided, one way or the other, on any issue?

By Mr. Carrera: No.

140 Q. The same is true with you, Mr. Bonnema?

A. Yes, sir.

Q. Have you had jury experience prior to this panel service?

A. Not prior to this time. Well, I could go back to, let me see, thirty or thirty-five years ago, I think, I served in the Circuit Court, but that is so far back.

By Mr. Thompson: Mr. Kula, you are a clerk, you say, in the RCA Victor Distributing Agency?

By Mr. Kula: Yes.

By Mr. Thompson: Where does it have its offices now?

By Mr. Kula: They are located here at 5050 South Kedzie Avenue.

By Mr. Thompson: Do you still live at 4408 South Francisco?

By Mr. Kula: Yes, sir, I do.

By Mr. Thompson: Are you a married man?

By Mr. Kula: Yes, sir.

By Mr. Thompson: I assume, without repeating the names, that you are in no wise acquainted with the Parmelee Transportation Company or any of its affiliates or subsidiaries?

141 By Mr. Kula: No, sir.

By Mr. Thompson: Or with Mr. Markin, its owner, or at least part owner?

By Mr. Kula: No, sir.

By Mr. Thompson: Have you read about this case back in 1955?

By Mr. Kula: No, sir. I might have, but I don't remember whether I did or what it was about.

By Mr. Thompson: It left no impression at all?

By Mr. Kula: No.

By Mr. Thompson: You have no notion whatever as to the merits or lack of merits of this lawsuit?

By Mr. Kula: No, sir.

By Mr. Thompson: Mrs. Delgado, do you still live at 341 North Parkside?

By Mrs. Delgado: Yes, sir.

By Mr. Thompson: I assume you know nothing about this lawsuit?

By Mrs. Delgado: No, sir, I do not.

By Mr. Thompson: Have you had any experience as a juror before this present service?

By Mrs. Delgado: About four years ago in the County Court.

By Mr. Thompson: In the County Court or one
142 of the state courts?

By Mrs. Delgado: In the county.

By Mr. Thompson: Before Judge Kerner, you mean?

By Mrs. Delgado: The Municipal Court.

By Mr. Thompson: Well, there was nothing in that experience which would bother you in this case?

By Mrs. Delgado: No, nothing whatever.

By Mr. Thompson: I assume you may or may not have read about this case, but whatever you read leaves no impression with you as to the merits of the case?

By Mrs. Delgado: No, sir.

By Mr. Meserow: Mr. Carrera, have you or your family or relatives been involved in any litigation with any of the railroads?

By Mr. Carrera: No, sir.

By Mr. Meserow: Or with Yellow Taxi or Checker Taxi or the Continental Air Transport, all affiliates of the Parmelee Company.

By Mr. Carrera: No.

By Mr. Meserow: Mr. Bonnema, have you or members of your family or relatives been involved in any lawsuits with Checker, Yellow, or Continental Air Transport?

By Mr. Bonnema: No, sir.

By Mr. Meserow: Mr. Kula, the same question to you.

143 By Mr. Kula: No, sir.

By Mr. Meserow: Mrs. Delgado?

By Mrs. Delgado: No, sir.

By Mr. Meserow: Thank you.

By Mr. Owens: Mr. Carrera, I represent Mr. Hugh Cross, an individual in this case, who was chairman of the Interstate Commerce Commission. He also is a former Lieutenant Governor of the State of Illinois. I am wondering whether or not the fact that he has been in government offices would result in your being prejudiced in any way against him.

By Mr. Carrera: No.

By Mr. Owens: Do you have any general prejudice against bureaucracies of any type or government offices or people who hold political offices?

By Mr. Carrera: No.

By Mr. Owens: You can give him a fair and impartial trial like all the other individuals?

By Mr. Carrera: I think so.

By Mr. Owens: Now the fact that something may have appeared in the newspapers before indicates that this trial could be written up again. Now you will confine your judgment on this case to the matters which you hear in the jury box.

144 By Mr. Carrera: Yes.

By Mr. Owens: And not the way it will be written up in the newspapers, is that right?

By Mr. Carrera: Yes.

By Mr. Owens: As the Court has previously instructed you, you shouldn't be discussing this with other people, and I believe within that purview is any discussions that come up in the newspapers. You will confine your attention to the evidence and testimony presented in this case?

By Mr. Carrera: Yes.

By Mr. Owens: And you are willing to do that?

By Mr. Carrera: Yes.

By Mr. Owens: If I asked you the same questions, Mr. Bonnema, would you give me the same answers?

By Mr. Bonnema: I would.

By Mr. Owens: And Mr. Kula?

By Mr. Kula: Yes, I would.

By Mr. Owens: And Miss Delgado, the same?

By Miss Delgado: Yes, the same.

By Mr. Thompson: Defendants accept the tender of the four.

By the Court: Swear in the first four jurors.

145 (Whereupon the first four veniremen were sworn to try the issues.)

FOCH P. BECK, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. Your name is Beck, B-e-c-k?

A. Beck, yes, sir.

Q. What is your business or occupation, Mr. Beck?

A. Driver salesman for Shell Oil Company.

Q. How long have you worked for Shell?

A. Nine years.

Q. Have you ever worked for any transportation company?

A. No, sir.

Q. Freight company?

A. No, sir.

Q. Have you ever worked for a railroad?

A. No, sir.

Q. What is a driver salesman? I should know, but I don't.

A. That is a fancy handle that they put on their
146 tank truck drivers. I drive a tank truck.

Q. Do you also take orders for oil or gasoline?

A. We are not supposed to. We just make the deliveries.

Q. Are you a member of a union?

A. Yes, sir.

Q. What is your union?

A. 782, Teamsters.

Q. Do you know whether or not your union has ever had any trouble with the Parmelee company or —

A. I know nothing of that sort.

Q. (Continuing) — or any of these other defendants in the case?

A. I know nothing of that.

Q. If there was any such trouble that wouldn't make any difference to you in trying the issues in this case?

A. No.

Q. Do you know anybody that works for any of these railroads?

A. Because I am a board member of our church, and our church has some 400 members, I do know several railroaders.

Q. Is there anything in your acquaintanceship or
147 association or being on a board with them that would in any way prejudice you for or against railroads?

A. No, it doesn't. I do not know what their specific jobs are, but I do know they work for railroads only because I am on the board and am supposed to know the members of the church.

Q. You don't know Mr. Keeshin at all?

A. No, sir.

Q. You never met him?

A. No.

Q. Do you know that he is in the transfer business generally, the Keeshin Trucking Company?

A. I have seen Keeshin trucks on the highway. I have seen the name "Keeshin" on them, but that is all I know about it.

Q. You never had any experience with the Keeshin Trucking Company?

A. No.

Q. That would have anything to do with your attitude towards this case?

A. No, sir.

Q. Have you been in any lawsuits, as plaintiff or defendant or any way?

A. I have been in one lawsuit as a defendant. I 148 hit a little three year old boy on 63rd and Kedzie.

Q. Is there anything in that experience which would prejudice you in any way against lawyers or judges or the judicial process?

A. None whatsoever.

Q. Nothing in that that would make it difficult for you to return a fair verdict in this case?

A. Nothing at all. I will listen to the evidence, what the evidence proves, that is my decision.

Q. I take it you have been serving on the jury panel here in the Federal Building. How many cases have you heard?

A. One previous case.

EDWARD J. ANDEL, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. What is your name?

A. Edward Andel, 2904 South 48th Court, Cicero. I work in a brass mill, the Chicago Brass, as a crane operator. I have worked there eleven years.

149 Q. Well, you are pretty good at reading my mind. You have answered three questions that I was going to ask you.

Who else have you worked for, Mr. Andel, prior to the brass mill job?

A. I worked for the Village of Riverside in the maintenance department. I worked one year with Timken Transportation, worked on the dock. I drove a semi for about four months. Then I enlisted in the Marine Corps. That was 1942, that one year, about a year.

Q. Have you ever been in any lawsuits as a plaintiff or defendant?

A. Never.

Q. Have you ever had any contact of any kind with these railroads except as a passenger?

A. No, sir.

Q. As a passenger, have you ever had any trouble with the railroads?

A. No, sir.

Q. Have you ever had any experience of any kind with anti-trust litigation?

A. I never did.

Q. As a witness or in a company in any connection?

A. No, sir, never.

150 Q. Do you know whether your company does business with the railroads?

A. They have box cars pulled in the back, but I very seldom go way back in the mill. They have copper come in there, but I never noticed. I work in the front.

Q. It is nothing you are interested in. You operate a crane, is that it?

A. Yes, I operate a crane on the pickle tank, where I soak the brass in acid for about five minutes, and the crane takes it up, about 1500, 2000 pounds at a time.

Q. Has there been anything in your experience of any kind that would lead you to believe that you couldn't give both these parties or all the parties a fair trial?

A. A fair trial, yes.

151 HARRY HILB, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The gentleman in the back row, your name?

A. Harry A. Hilb.

Q. You worked for a railroad forty years ago?

A. Yes, grabber No. 48.

Q. What would you be doing on that job?

A. As the freight cars would come into the yard, I would grab the numbers.

Q. How long did you work for them?

A. About a year.

Q. Was there anything in that experience — what railroad was it, by the way?

A. The Grand Trunk Railroad.

Q. Is there anything in that experience that would prejudice you for or against the railroad?

A. None.

Q. Have you ever been in any law suits?

A. No, sir.

152 Q. Is there anything in your experience of any kind that would prejudice you for or against railroads or trucking companies or freight haulers, transfer companies, or the parties in this suit?

A. None.

Q. I take it you don't know any of the parties?

A. No.

Q. Or any of the lawyers?
A. No.

EMILIA L. KASNER, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The woman next to you, your name, please?
A. Emilia Kasner.
Q. What is your business or occupation, please?
A. I am a union representative.
Q. Of what union?
A. Actors Equity Association.
Q. How long have you been with Actors Equity?
A. Eight years.
Q. Did you have some previous employment prior
153 to that time?
A. No, I was at school.
Q. Are you married?
A. Yes, I am.
Q. What does your husband do?
A. He is a student.
Q. At what school?
A. The University of Chicago.
Q. Have you ever been in any lawsuits?
A. No.
Q. For or against anybody?
A. No.
Q. You have never been a witness in a case?
A. No.
Q. Was this your first experience on a jury?
A. This is the first panel I am on.

Q. That is what I mean.

A. Yes.

Q. Is there anything in your past experience of any kind that would prejudice you against any of the parties to this case or would in your opinion make it difficult for you to render a fair verdict here between these parties?

A. I think not, but my experience is limited.

54 By Mr. McConnell: All right. I tender the next four jurors, your Honor.

By Mr. Thompson: Mr. Beck, you still live out at Harvey?

By Mr. Beck: Yes, sir.

By Mr. Thompson: Mr. Andel, you live out at Cicero?

By Mr. Andel: Yes, sir.

By Mr. Thompson: You live at 6210 South Maplewood, Mr. Hilb?

Mr. Hilb: Right.

By Mr. Thompson: I don't think I got your present occupation?

By Mr. Hilb: I am machinist for the City of Chicago.

By Mr. Thompson: What department?

By Mr. Hilb: The Bureau of Equipment and Service.

By Mr. Thompson: Mrs. Kasner, you still live at 500 East 33rd Street?

By Mrs. Kasner: Correct.

By Mr. Thompson: What school is your husband in out at the University of Chicago?

By Mrs. Kasner: Chemistry.

By Mr. Thompson: Where is the office of the Actors Equity Association?

By Mrs. Kasner: 612 North Michigan.

155 By Mr. Thompson: In Chicago?

By Mrs. Kasner: That is right.

By Mr. Thompson: As has been told you by Mr. McConnell, this is an action brought under the so-called Anti-Trust Laws of the United States, in other words, laws which are designed to protect against unreasonable monopolies, and so on. Do you have any preconceived notions as to the good or evil of anti-trust laws? Do you have any preconceived notions as to what ought to be decided in a case of this character?

By Mrs. Kasner: Are you addressing me?

By Mr. Thompson: I am addressing Mr. Beck presently.

By Mr. Beck: No.

By Mr. Thompson: Or you, Mr. Andel?

By Mr. Andel: No.

By Mr. Thompson: Or Mr. Hilb?

By Mr. Hilb: No.

By Mr. Thompson: Or Mrs. Kasner?

By Mrs. Kasner: No.

By Mr. Thompson: As far as you know, all of you, starting out at this stage of the case, you are entirely free of any opinion one way or the other about the merits of the litigation, is that right?

156 I think all of you said this is your first experience, this panel in the Federal Court.

Mr. Hilb, your department doesn't have anything to do with this transportation here in Chicago, does it?

By Mr. Hilb: No, I work on heavy equipment.

By Mr. Thompson: Heavy equipment?

By Mr. Hilb: Roller, cranes, maintaining and starting presses.

By Mr. Thompson: That is in the heavy equipment department of the City of Chicago?

By Mr. Hilb: Right.

By Mr. Thompson: How long have you worked at that?

By Mr. Hilb: Twenty-two years.

By Mr. Thompson: Civil Service, I suppose?

By Mr. Hilb: Right.

By Mr. Thompson: Defendants excuse Mrs. Kasner.

157 By the Court: Call another juror.

By the Marshal: Mr. Zoost.

JOHN J. KISLEY, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thompson

Q. You are Mr. Kisley?

A. Yes, sir.

Q. Do you still live at 4839 West Van Buren?

A. Yes, sir.

Q. What is your business?

A. I am an auditor for Yardley's of London, Incorporated, 445 Lake Shore Drive.

Q. How long have you worked for Yardley's?

A. Twelve years.

Q. I suppose you have read something about this litigation? Do you have any recollection of reading anything about the situation back in 1955 or thereabouts when the controversy occurred?

A. No, sir.

Q. You have no notion now as to who is right or wrong in this lawsuit, do you? Do you have any feeling one way or the other about prosecutions under the anti-trust laws?

158 A. No.

Q. You don't know any of the parties to this litigation, do you?

A. No.

Q. Do you know anything about the Parmelee Transportation Company, which is a corporation organized in 1929, I think it was?

A. No, sir.

Q. Nor the Continental Transport Company, which handles the passengers to the airports; you have no connection with them?

A. No, sir.

Q. Or the Yellow Cab Company here in town?

A. No, sir.

Q. Or the Checker Cab Company?

A. No, sir.

Q. You don't know Morris Markin, one of the principal owners, if not the owner of Parmelee Transportation?

A. No, sir.

Q. As far as you know, you have no connection in any way, as a stockholder or otherwise?

A. No, sir.

Q. This stock is on the public market and you 159 don't have any of that?

A. No, sir.

Q. And you have no connection with it at all?

A. No, sir.

Q. You have had no experience with any of the defendants, Mr. Keeshin, or Mr. Cross, or any of these railroads which would affect your verdict in any way?

A. No, sir.

Q. You have never had any participation in litigation one way or the other?

A. No, sir.

By Mr. Thompson: We will tender the four.

By the Court: All the defendants?

By Mr. Tone: Yes.

By Mr. Meserow: Yes.

By Mr. Owens: Yes, your Honor.

By the Court: All right.

By Mr. Thomas McConnell: What is the nature of your work? What do you do?

By Mr. Kisley: I fill orders. As orders come in, I fill them.

By Mr. McConnell: Do you know whether or not you have any business with the defendant railroads, I mean your company?

By Mr. Kisley: I don't think so. We get all of our stock through trailers.

By Mr. McConnell: I will accept the tender.

By the Court: Swear in the next four jurors.

(The panel was duly sworn to try the issues.)

By the Court: Please join the other four.

BEATRICE BERLIN, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The lady in the front row, your name is Berlin?

A. Yes, Mrs. Beatrice Berlin.

Q. And you are a housewife?

A. Right.

Q. What is your husband's business or occupation?

A. He is a retired grocer.

Q. Was he a retail grocer or a wholesale grocer?

A. Retail.

Q. Have you ever had any lawsuits of any kind?

161 A. No, sir.

Q. Have you testified as a witness in any lawsuits?

A. No, sir.

Q. And you have been in this jury panel for the first time; you have never been a juror before?

A. No.

Q. Have you already heard a case or maybe two?

A. In this court?

Q. Yes, in the Federal building?

A. Just now, four cases I was on.

Q. Four cases?

A. Yes.

Q. Is there anything in that experience which would prejudice you in any way against the judicial process or lawyers or judges?

A. No, sir.

Q. Has there been anything in your experience with any of these railroads that would prejudice you for or against railroads?

A. No, sir.

Q. Do you have any ideas about the anti-trust laws which would prejudice you for or against their application?

A. No, sir.

162 Q. Do you know of anything in your experience which would make it difficult for you to give either side or anyone here a fair trial?

A. No, sir.

DOLORES J. FRAHM, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The lady in the front row, is your name Frahm?

A. Dolores J. Frahm, that is right.

Q. Is it Miss Frahm?

A. Yes.

163 Q. What is your business or occupation?

A. Assistant manager of girls' wear, Sears, Roebuck & Company, on State Street.

Q. Of what wear?

A. Girls' wear.

Q. How long have you been employed by Sears?

A. A year and a half. Prior to that time I was with Mandel Brothers for two and a half years in an assistant buyer's position.

Q. Has your entire business experience been in the women's clothing?

A. No. For three and a half years I was in real estate. It has always been in selling.

Q. Selling — you are a sales lady?

A. Yes.

Q. I take it, then, you have never had any experience with the railroads, business experience?

A. None whatsoever.

Q. Except maybe to ride trains. Have you ever had any experience of railroads of any kind or transportation companies which would make it difficult for you to decide the case fairly?

A. No, sir.

Q. Is there anything in your experience of any
164 kind that would make it difficult for you to decide a case of this kind as far as you know about it?

A. Nothing that I know of.

Q. Have you ever been in any lawsuits of any kind?

A. No, sir.

SOPHIE WASSERMAN, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. The lady on the back seat, your name?

A. Sophie Wasserman.

Q. What is your business or occupation?

A. Housewife.

Q. What is your husband's business?

A. Retail liquor store.

Q. Where is his store?

A. 45th and Prairie.

Q. Have you ever been involved in any lawsuits of any kind?

A. No, sir.

Q. Have you ever been a juror before?

165 A. Yes, in this court.

Q. In this particular panel?

A. No.

Q. In some previous year?

A. No, sir.

Q. Just this—

A. Just this month.

Q. Just this period of service?

A. Yes.

Q. You mean you have heard other cases?

A. Yes.

Q. Is there anything in that experience that would prejudice you against this sort of a lawsuit?

A. No, sir.

Q. Is there anything in your experience of any kind that would make it difficult for you to decide this case fairly?

A. It wouldn't, but I know Mr. Keeshin's daughter-in-law. She went to school together with my son, and then we were neighbors.

By the Court: That was who?

By Mr. Thompson: Keeshin's daughter-in-law and she were neighbors.

166 By the Court: She may be excused by the Court.

By the Marshal: Benner.

MYRON E. ZOOST, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. Are you Mr. Zoost?

A. That is right.

Q. And your address?

A. 422 Midway Drive, Island Lake, Illinois.

Q. What is your business or occupation?

A. I drive a tank wagon for the Sinclair Refining Company.

Q. Is that the same sort of a job this other man had of delivering oil and gasoline to filling stations?

A. Service stations and homes.

Q. Wherever you want oil and gas, you deliver it?

A. You buy it, and we will bring it to you.

Q. Are you a member of the same union?

A. Yes, sir.

Q. Do you know Mr. Keeshin's company, the Keeshin Trucking Company?

167 A. I have heard of it.

Q. Have you ever worked for it or any of its connections of any kind?

A. No, sir.

Q. I take it you know none of the parties to this case or any of the lawyers?

A. No, sir.

Q. Have you ever been in any lawsuits?

A. No, sir.

Q. Is there anything in your experience of any kind that would make it difficult for you to give us a fair trial, and when I say "us," I mean everybody.

A. Nothing that I can think of.

168 FRED J. BENNER, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The next gentleman in the back row, your name?

A. Fred Benner.

Q. What is your business or occupation?

A. Right now I just sold a grocery business. I am in retirement for a while.

Q. You are in retirement now?

A. That is right.

Q. What was your last gainful employment?

A. I have not worked for anybody. I was always on my own.

Q. Your own business?

A. Yes; grocery was last, and before that I had trucks running for Royal Crown Ne-Hi Company.

Q. What kind of a grocer were you, retail or wholesale?

A. Retail.

Q. Do you know any of the parties here in this lawsuit?

A. None whatsoever.

169 Q. Do you have any friends who work for the railroads?

A. No.

Q. Or the trucking companies involved?

A. No.

Q. Do you know of anything in your experience of any kind that would make it difficult for you to give us all a fair trial?

A. No.

By Mr. McConnell: I will accept the panel, your Honor.

By Mr. Meserow: Mrs. Berlin, do you or your husband own any stock or have any interest in the Parmelee Transportation Company, the Yellow Cab, Checker Cab or Continental Air Transport?

By Mrs. Berlin: I know he has some stock. I don't know which company it is in. I have heard him mention some of them.

By Mr. Meserow: Any of these companies I have mentioned?

By Mrs. Berlin: I heard him say something about the Yellow or the Checker or something. There is something that he has.

By Mr. Meserow: He has some stock in those companies?

170 By Mrs. Berlin: Yes.

By Mr. Meserow: Was he employed by a grocery chain or did he own his own grocery?

By Mrs. Berlin: His own.

By Mr. Meserow: Before he retired?

By Mrs. Berlin: Yes.

By Mr. Meserow: When did he retire?

By Mrs. Berlin: Thirteen years ago.

By Mr. Meserow: Mr. Benner, your grocery was individually owned?

By Mr. Benner: Yes.

By Mr. Meserow: And it was outside of Chicago?

By Mr. Benner: That is right.

By Mr. Meserow: Do you have any stock or do any members of your family in any of these companies I have mentioned?

By Mr. Benner: None whatsoever.

By Mr. Meserow: Have you ever been involved in any lawsuits involving these companies?

By Mr. Benner: No, sir.

By Mr. Meserow: How about you, Miss Frahm; are you married?

By Miss Frahm: No.

By Mr. Meserow: Have you ever been involved in
171 any of these lawsuits with any of these companies I have mentioned?

By Miss Frahm: No, sir.

By Mr. Thompson: Mrs. Berlin, do you know whether you have any stock in the Yellow Cab, or is that just one of the names that has been bandied about?

By Mrs. Berlin: We have—I don't know just which one it is, but we have one of the companies, that I know. It is either Yellow or Checker.

Mr. Thompson: That is connected with this plaintiff transportation company. *Do you think that that would* influence you in any wise in the trial of this lawsuit?

By Mrs. Berlin: I don't think so.

By Mr. Thompson: I don't either.

By Mr. Mesgrow: Mrs. Berlin may be excused.

By the Marshal: Ceja.

SALVADOR I. CEJA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. Meserow.

172 Q. How do you pronounce that?

A. Ceja.

Q. Where do you live, Mr. Ceja?

A. 2116 South Ridgeway Avenue.

Q. What is your occupation?

A. I am a tax deputy in the Tax Redemption Bureau for the County Clerk, Eddie Barrett.

173 Q. How long have you held that position?

A. I just come back in August. I left the Sheriff last year, but I worked formerly two and a half years for Judge Otto Kerner as a minute clerk in his court room.

Q. Do you know any of the parties in this case?

A. No, I don't.

Q. Have you ever been involved in any lawsuits?

A. Well, I have, as a defendant and a plaintiff.

Q. What kind of cases?

A. Accident, automobile.

Q. By reason of those lawsuits, have you developed any prejudices against plaintiffs or defendants or judges or lawyers?

A. No, because I was on both sides, plaintiff and defendant.

Q. What is the nature of your duty in the County Clerk's office?

A. Well, right now we make searches. We write the tax bills that come in that have already been paid, and we follow through, and we make up the orders after they are made out.

Q. Is that in Chicago or the country towns?

A. Right here for the County Clerk, the County Building.

174 Q. Is your job civil service?

A. No, it isn't.

Q. In other words, it is politically sponsored?

A. Yes; I am a precinct captain.

Q. What ward?

A. 22nd Ward.

Q. Who is the Committeeman there?

A. Otto Janousek, the biggest man on the City Council.

Q. He is in size.

Are you or any members of your family stockholders, or do you have any interest in the companies I mentioned before to the other jurors?

A. None at all.

Q. Have you any preconceived prejudices or ideas about anti-trust litigation?

A. None at all whatsoever, just what I read about four or five years ago when I think Parmelee, either Parmelee or this other concern, had the rights, or something like that, and the other one took over, and I think it came to the City Council, or something like that. Isn't that so?

By the Court: You don't have to answer it.

By Mr. Meserow: Mr. Ceja, you may be excused.

By the Marshal: Mackie, Jr.

175 GEORGE R. MACKIE, JR., a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell.

Q. Mr. Mackie, where do you live?

A. 11133 South Union, Chicago 28.

Q. Your business or occupation.

A. International Harvester Company, production records, office clerk, seventeen years.

Q. What would production records be?

A. The figures that are received in our plant from all the other plants in the chain, and then we coordinate those with the IBM department. I am like a production coordinator.

Q. Having to do primarily with records of your production in the plant?

A. That is right. They are orders for the IBM system.

Q. You have been with them seventeen years?

A. Yes, sir.

Q. Have you ever worked for a transportation company of any kind?

176 A. No, I never have.

Q. Or any railroads?

A. No. I have relatives with the New York Central and the B&O and the Chicago and Alton, but they are not close relatives.

Q. How close?

A. Well, I have a cousin—one cousin works for the Chicago and Alton and another works for the B&O, and my wife's niece works for the New York Central.

Q. Well, do you think because they work for those companies that that would interfere with your giving anybody a fair trial here?

177 A. It doesn't mean anything to me that they work for those railroads. I have been involved with the B&O. It didn't go to litigation, but I had a suit against them. It was settled out of court.

That was in 1945 or 1946; I am not sure what year. I was hurt on the B&O outside of Gary, and they settled out of court.

Q. Well, were you happy about your settlement?

A. I did all right.

Q. Do you feel under obligations to them because you got such a good settlement? Is there anything in that that would bother you from giving any of us a fair trial?

A. No; I still ride the train. I have no feelings for or against them. I still ride trains.

Q. It wouldn't make any difference in your judgment here what you do to us?

A. No, sir. I rode all the trains during the war, the Pennsylvania, New York Central, B&O, North Shore, every train there was, I guess. I was in the Service for two years, and I had to ride trains to get back and forth.

Q. I know you had to ride trains, and we have no objection to your riding all the trains you want, just

178 so there is nothing in that experience that would prejudice you in any way.

A. No, sir.

Q. Do you know of anything in your whole experience, your time on this earth that would prejudice you one way or another in this lawsuit?

A. I don't know too much about it, to tell you the truth.

Q. I understand that, because I don't know too much about it either, but what you know and what we have told you, the little we have been allowed to tell you here about this lawsuit; can you tell us whether or not there is anything that would prejudice you?

A. No, sir, there is nothing.

By Mr. McConnell: I will accept the tender, your Honor.

By Mr. Keating: Mr. Mackie, are you related to a David Mackie?

By Mr. Mackie: No; I don't have any relatives.

By Mr. Thompson: They are accepted.

By the Court: Swear them in.

By Mr. McConnell: We have two alternates.

By the Court: All right.

179 By the Marshal: Marie Anderson.

By the Court: Swear in these four.

(The third panel was sworn to try the issues.)

By the Court: Please join the other eight.

By the Marshal: Bessie Bayless.

MARIE ANDERSON, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell.

Q. The lady in the front row?

A. Marie Anderson.

Q. Let's start with Marie Anderson. Are you Miss Anderson or Mrs. Anderson?

A. Mrs. Anderson.

Q. Your business or occupation?

A. Housewife.

Q. What is your husband's business or occupation?

A. He is a machinist in maintenance for the Western Electric Company.

Q. Prior to your marriage or during your marriage have you ever worked for any transportation companies?

180 A. No, sir.

Q. Have you ever worked for any companies in any way connected with these defendants or the plaintiff in this lawsuit?

A. I worked for the Hotpoint Company. I imagine they used the railroads.

Q. When did you work for Hotpoint?

A. I worked for them fifteen years. I quit five years ago.

Q. Did you work for them during your entire business experience?

A. Yes, sir.

181 Q. In what way did you work for them? What was your business? What was your occupation?

A. A group leader in the pre-packing department.

Q. Have you ever been involved in any lawsuits, either as a plaintiff or as a defendant?

A. No, sir.

Q. Have you ever been a witness in any case?

A. No, sir.

Q. Have you ever been on jury duty before you appeared here on this panel in the Federal Building?

A. We sat in on three cases this month; that is all.

Q. Is there anything in that experience that would prejudice you against lawyers or judges or lawsuits?

A. No, sir.

Q. Is there anything in your experience that would make it difficult for you to give any of us here a fair trial?

A. No, sir.

BESSIE BAYLESS, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell.

Q. Mrs. Bayless, are you a housewife?

182 A. I am a housewife.

Q. Have you ever had any business experience? Have you worked for anybody?

A. Well, I was a nurse.

Q. You didn't work for any railroad companies?

A. No.

Q. Have you ever been involved in any lawsuits of any kind?

A. No.

Q. What does your husband do?

A. My husband is dead. I am a widow.

Q. Is there anything in your experience of any kind that would make it difficult for you to give the parties here a fair trial?

A. No, sir.

By Mr. McConnell: I will accept the two alternates.

By Mr. Meserow: Mrs. Bayless, have you or the members of your family owned or do you own any stock in the Parmelee Transportation Company, Checker, Yellow, or Continental Air Transport?

By Mrs. Bayless: No, sir.

By Mr. Meserow: All right.

By Mr. Thompson: We accept them.

183 By the Court: All right; bring out the other jurors.

All of you other jurors, thank you for coming in here. You may retire and have your lunch and then report back to your jury room.

All the jurors rise and be sworn again, please.

(The jury of twelve and the alternates were thereupon sworn to try the issues.)

By the Court: Be seated, please.

Now that you have been accepted and sworn in, you will report every morning until you are excused in this court room into the jury room and you will stay in there until we call you for service in this case.

As you probably know, in the mornings we have other matters which take about a half hour sometimes or a little over, and you may not be called in until 10:30, but I expect you to be here at 10:00 o'clock sharp in the jury room.

Again, I want to impress upon you and insist that you do not discuss this case with anyone, not even among yourselves, and let no one talk to you about the case anywhere, at home, here or en route, and if anybody talks to you, I want you to report them to me, and I want you to keep your minds free, clear and open until your final deliberations.

184 You may be excused and have your lunch and come back at 2:00 o'clock. Make it 2:15 in the jury room.

(Whereupon a recess was taken in the hearing of the above-entitled cause to 2:15 o'clock p.m. of the same day, Monday, April 25, 1960.)

185 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Monday, April 25, 1960
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;
Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;
Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;
186 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

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187 By the Clerk: Case on trial.
By the Court: Bring out the jury.

(Whereupon in the presence and hearing of the jury, the following proceedings were had:)

By the Court: Mr. McConnell.

And Thereupon Mr. Thomas McConnell Addressed The Court And Jury In Opening Statement On Behalf Of The Plaintiff:

By Mr. McConnell: May it please the Court, ladies and gentlemen of the jury: At this stage of the proceedings, it is my province to make what we term and what you have heard in the other cases which you have heard on this panel, an opening statement of the case.

I have been practicing law for more years than I want to admit, and this is the first time in my experience that I have come before a jury at a loss as to what to say in an opening statement.

My quandary arises because of rulings that have been made by Judge Miner prior to the trial, limiting the issue. I have no desire to get into trouble with the ruling judge, at the same time I have the problem of what to present to you people as to the nature of our case.

188 I am also faced by a further quandary in that a prior judge, who ruled on motions on the pleadings, has stated that our conspiracy proofs were competent on the issue of public injury. If I can understand Judge Miner's ruling, that ruling has been overruled, and I am limited to an issue which I really don't understand myself.

As I stated to you people this morning, I represent the plaintiff in the case, and I brought into this court a case which was brought under Sections 1 and 2 of the Sherman Act and the concomitant section of the Clayton Act.

189 The first of those sections deals with a conspiracy to restrain trade, and the second deals with a monopoly of trade in commerce.

We have taken depositions, and we have worked hard and arduously in the preparation of this case, and those issues apparently are beyond the pale.

I am not going to burden you people with my difficulties in the law of this case. That is something we have been arguing, and I have very definite opinions on

it as to how the case should be presented, and my only quandry, and it is a real quandry, is how to make a record here which the court above can see that certain issues were involved.

By Mr. Thompson: If the Court please, this is an opening statement. An opening statement is supposed to tell the jury what you expect to prove, and this has nothing to do with that.

By Mr. McConnell: In opening statement, the province of an opening statement is, as Judge Thompson has suggested.

By the Court: I will sustain the objection. There has been a full opinion rendered by this Court to counsel before the selection of the jury, and counsel knows 190 the precise limitations in those rulings.

By Mr. McConnell: Well, your Honor, with all due deference to what I may know, I want the record to show exactly what the issue is so that we can have a ruling on it up above.

This case was brought, as I say, under these two sections of the anti-trust laws, and the defendants were outlined to you this morning.

I don't know that any good purpose is served by going over them again, but this is an opening statement which can't be supplemented by any other statement that I have made, so I guess that I have to do that.

As to the parties, the Parmelee corporation is a Delaware corporation which was engaged in commerce in the carrying of passengers and baggage at different terminals in the City of Chicago, back and forth, in a western direction or eastern direction or maybe some other direction.

It involves the Pennsylvania Station, sometimes known as the Union Station, the North Western Station, the

Santa Fe Station, the New York Central Station, the LaSalle Street Station over here, the Illinois Central Station, and the Baltimore & Ohio Station.

191 Those are the main terminals, and those are the main stations, and the Parmelee company, starting out with Frank Parmelee way back in 1853, started in that business, making it possible for passengers without going out and hiring other means of transportation, simply on the basis of a coupon issued by the railroads, to get from one terminal to another and continue their interstate travel, with as much freedom from interruption as possible here in view of the unique situation prevalent here in Chicago of having all these terminals and having these interrupted portions of the voyage.

The proofs will show that. I don't know as there is any dispute in the proofs on that.

The proofs will show, and I don't think there is any dispute about this proof, and certainly I don't think there is an issue raised on the pleadings on it, that the Parmelee Company had this business or its successors or predecesors had this business for 102 years.

192 The name is a common name. Anybody that ever traveled railroads I am sure has heard it mentioned or has known of it, and has probably used its services. It was there many, many years.

That business was carried on by limousines which picked up the passengers and their baggage and carried them from one terminal to another. There was also a pickup service which anybody arriving in Chicago could call Parmelee or tell Parmelee they wanted their baggage taken from the terminal and delivered at their home or vice versa, the other way at their home, picked up at their home and delivered to the station. That was part of the service.

The railroads were working under a situation where I think the coupon which Parmelee was charging was for the passenger for that trip, station to station, was $1.20. That was the amount at least that was offered by Parmelee to do the job, and that service oevr the years was considered satisfactory.

At least the witnesses testified that the services were perfectly satisfactory, and Parmelee had had many many years of experience in handling this kind of business, knew how it should be done and they were willing to do it for this price.

193 Then there was some discussion, as the proofs will show, among various officials of railroads who had to do with this sort of business, passenger people, as to whether or not if the matter was opened up for bidding from outsiders, maybe the railroads would get a little better rate.

The railroads were paying the charge. Whether or not it was included in the overall tariffs, I don't know. I know it was not part of the Interstate Commerce Commission's task to rule on these rates. The Interstate Commerce Commission ruled that it had no jurisdiction over this particular form of transportation, although the proofs will show that this was an integral part of interstate commerce; that it was commerce between two states. It was the commerce of carrying passengers and their baggage originating outside of the State of Illinois, passing through the State of Illinois, and continuing as one continuous voyage beyond the State of Illinois in interstate commerce.

Of course, one of the elements of an anti-trust case is that plaintiff, such as I represent, has to show that commerce is involved and directly interfered with by something in violation of the anti-trust laws.

As I say, I didn't give you a date, but along in
194 1954 sometime, the railroads decided that they would investigate the question of whether or not services could be obtained from some other carrier or a transportation company or trucker on a cheaper basis or where the thing would be more attractive possibly than Parmelee was offering.

195 I believe that some eight companies were contacted and asked to submit bids. I think only two of them actually got down to a serious attempt to bid on the business. One of the companies was Keeshin's company—not his company. It was Keeshin himself. Keeshin has been in the transportation business, as the proofs will show, and he was contacted and asked to make make some sort of a proposal.

Then the railroads had a committee of six. The chairman of that committee was a man by the name of Padrick. He was asked to contact our company, the Parmelee Company, and get a proposal from them, and he did so contact us and we did give him a proposal.

There were three eastern railroads represented on that committee. There was the New York Central, the Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad. There were three western railroads represented on that committee. One was the North Western Railway, one was the Illinois Central Railway, and the other one was the Santa Fe.

Now, each of those railroads appointed representatives to sit on that committee to determine whether or not any other proposal than Parmelee's should be ac-
196 cepted or whether or not anything should be done in the way of changing from one carrier to another for that particular segment of commerce.

Along in March, Parmelee submitted a bid. I believe their bid was $1.20. I don't have the exact figure in mind.

As near as I can figure out, and as the proofs will show, I think, the bids were submitted and as far as the costs were concerned, there was not enough difference to measure.

The proofs will show that there was some comment made and some direction made to the people who sat on this committee that unless the coupon could be gotten down to $1.00 or $1.10, or something in that neighborhood, that there wasn't really any real reason to change from a carrier who had been doing this business and was thoroughly familiar with it to someone new who had never been in the business, and the proofs will show that Mr. Keeshin had never been in any such business.

The proofs will show that he proposed an absolutely new company which hadn't even been organized yet. He was going to organize it and buy some new equipment. There was some talk in the committee about air conditioning of station wagons by Keeshin on one hand, and we were using limousines on the other.

197 Finally the Parmelee bid ended up where Parmelee was going to supply $500,000 of new equipment over a period of time without any particular designation of it. Keeshin was going to use station wagons and some Volkswagons, and the details of those contracts worked out to something that was about the difference of tweedle-dee and tweedle-dum.

Anyway, on March 15, the proofs would show that there was very clear evidence that members of the committee were satisfied that the Parmelee bid was good enough so there was no reason to make any change. The Parmelee company was practically assured that the business was theirs.

In the intervening time things occurred, which I apparently am not free to mention, and one of the parties who is a defendant in this case is Hugh W. Cross. He was mentioned here this morning by the other side.

He was a member of the Interstate Commerce Commission. Later, in July of 1955, he became chairman of the Interstate Commerce Commission. He was from Illinois. He had been Lieutenant Governor of Illinois, and through the intercession of Mr. Cross with the railroad presidents, the proofs would show with three specific presidents, Mr. Simpson—

198 By Mr. Meserow: I object to that testimony as being immaterial to the issue on trial here now. These statements are not relative to public economic injury.

By Mr. McConnell: These statements are contained in the complaint and the issues that are here for trial.

By Mr. Meserow: There are a lot of statements—

By Mr. McConnell: They are not evidence. They are merely my statement of what I would attempt to prove.

By the Court: I will let him go on a bit. I will see how much of it is admissible for the purpose of the limited issue.

By Mr. McConnell: The proofs would show that Mr. Cross, who was then a member of the Commission, went and saw at least three railroad presidents. He saw Howard Simpson of the Baltimore and Ohio. He saw Paul Feucht, who was then president of the Chicago North Western Railway. He is not retired, I believe. And he saw Mr. Wayne Johnston, who was president of the Illinois Central Railroad.

He made special trips to see those gentlemen and ask them to give this business to Keeshin. He told at least one of these gentlemen, Mr. Johnston, that if Keeshin got the contract that he would have a position with the

new company to be formed by Mr. Keeshin that 199 would take over this business.

The other railroad presidents, according to their depositions which would be offered here, knew about that. They had heard it rumored. They don't say that they were actually told that by Mr. Cross, but we would attempt to prove on this issue of public convenience and public injury that the railroad presidents, all of them, six at least had representatives on this committee, were actually dealing and deciding the question of who was going to obtain this business, were in effect importuned by Mr. Cross to change from the plaintiff in this case to the Keeshin company; and that within a few days after that the formerly favorable reception which had been had by the members of the committee and the recommendations which the proof will show they had actually made to their officers who were going to ostensibly decide it on what the committee members recommended, that in disregard of those recommendations and in the face of the recommendations, they were all directed to change their recommendations to vote in favor of Keeshin as against Parmelee.

200 Now that recommendation was sent back to the terminal railroads, the twenty-one railroads which had business in the terminals, and was accepted. I believe that Parmelee was notified on June 13, 1955, or thereabouts, of the unfavorable action of the committee, and Parmelee then was working under an arrangement whereby it would maintain and do the work until September 15 of 1955, I believe, at which time Parmelee was out of the business and the Keeshin Company took over.

That was the end and termination of the Parmelee Company in the transfer business. There wasn't any other such business. It is a unique business. There is only one of them, so far as I know, that does that sort of thing.

The railroads entered into a five-year contract with Mr. Keeshin's company, which precluded anybody else from bidding or seeking that sort of employment during the five-year period of the contract.

Now, the issue of damages is not before us. I don't think it is necessary for me to discuss that. It is just how we as a private litigant were damaged under the anti-trust laws.

201 Of course, one of the conditions of bringing the lawsuit at all by a civil litigant or private litigant is that the private litigant must show damage to himself as distinguished from just general over-all damage to the public.

If we were permitted to get to that issue, we would offer proof of the value of the services, profits that were made, to sustain the claim of damages, which was some six or seven million dollars, in the complaint.

I have discussed this with his Honor, Judge Miner, and made statements about it outside the presence of the jury, and I do not propose to offer to this jury specific evidence of money damage to the public. I don't know whether that would include difference in rates, difference in quality of service, whatever that specific thing would involve. I have taken the position before the Judge that I do not believe that is an issue in an anti-trust case, and we are making a record here which can be reviewed in a court of review, and I do not propose to offer evidence of difference in rates, difference in quality of service.

The offer of evidence which I shall make involves
202 the proof of the conspiracy and the monopoly issues, which I am advised will have to be made outside the presence of the jury.

I know of nothing further that I can add, your Honor, to what I have stated.

By the Court: That is correct. That is my ruling.

Thereupon Mr. Meserow Addressed The Court And Jury In Opening Statement On Behalf Of Defendants John L. Keeshin And Railroad Transfer Service, Inc.

By Mr. Meserow: If the Court please, and ladies and gentlemen of the jury: I represent two of the defendants, John L. Keeshin and Railroad Transfer Service.

My colleagues, Judge Thompson and Mr. Tone, represent the railroads and railroad presidents. Mr. Keating represents the New York Central, and Mr. Owens, at the other side of the table, represents Hugh Cross. You will undoubtedly hear from them when I complete my statement.

The Railroad Transfer Service is a corporation that was formed in July of 1955. The stock is owned entirely by Mr. Keeshin. So when I refer to either Railroad
203 Transfer or Keeshin, it is the same people.

We propose to prove, and there is only one question involved here, according to Judge Miner's rulings, has there been public economic injury by reason of the railroads awarding the contract to Keeshin which was previously held by Parmelee?

It is incumbent upon the plaintiff, Mr. McConnell and his client, to prove that there has been public economic injury. Keep that in mind, and I am sure the judge will so instruct you at the termination of this case. You must find from the evidence that there has been public economic injury suffered by reason of this change of contract.
204 Now let me amplify briefly what Mr. McConnell tried to explain to you. What is the essential factor here?

For example, if Mr. Andel or Mr. Carrera or Mr. Beck should get on a train in San Francisco, Los Angeles or—

By Mr. McConnell: I object to this. This is an argument.

By the Court: Objection sustained.

By Mr. Meserow: I am trying to explain the coupon service.

If they purchase a railroad ticket to go through from one destination to another, which goes through Chicago, the railroad sells them their railroad ticket, and attached to the ticket is a coupon.

When Parmelee had the transfer contract, they had the Parmelee ticket. Since 1955, it was a Keeshin railroad transfer ticket.

The public does not pay any more or any less whether they use that ticket or they don't. We are prepared to show that. So that is included in your ticket.

Now, when you get to your destination in Chicago, and you want to transfer to another station, supposing you come in on the Santa Fe at the Darborn Station 205 and you want to go to the La Salle Street Station to get on a New York Central train, there waiting is the railroad transfer vehicle where you hand in the coupon and you are taken to the other station without any further charge.

We are prepared to show that in 1955, when the railroads were negotiating, and in 1954, negotiating for this contract, the rate that the railroads paid Parmelee was $1.22 for each coupon that Parmelee turned in to the railroad.

Now the railroads had a declining passenger traffic. They had been losing money for years, and they became conscious of their expenses. They wanted to cut down the expenses as much as possible, and they scouted around, and they had been for several years, to see if they could cut the cost of this Parmelee coupon service.

They met with Mr. Morris Markin, as we will show, and he told them, "Well, the way costs are going up, it may go to $1.50 per coupon." The railroads got fearful of this, so they solicited bids—not from seven, but about fifteen different companies, such companies as Gray Line, Willett, Landon Cartage, Keeshin, and half a dozen others.

206 Only three companies presented any bid. Landon on baggage alone; Willett on both; and Mr. Keeshin. There were only three bids that came in.

Before Mr. Keeshin interposed his bid, he had his staff of about six people that made a complete survey of all this inter-station transfer service. He studied carefully the cost factors, the rates, the timing, the number of passengers, the trains going in and out, when they arrived, and they sat down and studied it, he and his staff.

We are prepared to show that Mr. Keeshin has been in the transportation business for forty-four years. He placed at the head of his company Colonel Alex Baxter, who was a transportation expert in this field.

207 He served the Army for many years as head of the Fifth Army Corps in Transportation. He was one of the men that was involved, who headed this Railroad Transfer Company.

When Mr. Keeshin completed this survey, he made a bid to the railroads of $1.20. That is two cents less than Mr. Markin or Parmelee had been getting from the railroads.

In addition, he promised them this, and this is important, because it does affect the public.

He promised them this; that he would replace his equipment, all of it, within thirty months with new equipment. In addition he promised them limousines that were heated in the winter and air conditioned in the summer, and the reason that he provided for air conditioning was that

when passengers come into Chicago on an air conditioned train, and Chicago can be hot, they get into one of these vehicles, and it is an air conditioned vehicle.

In addition, these limousines would have automatic power brakes and power steering, all the latest devices, and a chief factor that interested the railroads was that Mr. Keeshin guaranteed a firm bid in the beginning for three years, because he had a commitment from a
208 labor union in which they agreed to give him a three-year labor contract for the drivers and the employees of his new company, so that he was able to go to the railroad committee and say, "Yes, I can give you a firm bid for three years."

It had an acceleration clause that when the cost of living went up, then the rate went up a penny for every five-cent increase in the cost of living.

Now, let's compare Parmelee. Parmelee in the beginning, $1.22; they were being paid by the railroads, no air conditioning, no automatic devices on the cars, and another big factor that Keeshin had was that he was putting in radio-dispatched cars.

Parmelee absolutely refused to have air conditioning and radio-dispatched automobiles. What is the significance of radio-dispatched? On the face of it, it doesn't sound like much, but here is what happened when Parmelee operated from station to station.

A man would leave in his car or would be stationed at the LaSalle Street Station, let's say, and a train would come in at the Dearborn Station, and there was an extra big crowd of people that wanted to go to another station.

The only way that you could get a Parmelee limousine
209 from that station to another station, and if he was enroute from LaSalle Street, say, to the IC Station at Twelfth Street, there is no way of getting ahold of

him until he got to Twelfth Street, and when he got to Twelfth Street then somebody would say, "There is a big crowd over at the Dearborn Station. You had better go over there."

The result was that the passengers would have to wait at the stations, whether it was hot or cold not making any difference. They had to wait for the Parmelee cars to come over.

We are prepared to show tha some of these Parmelee cars were ancient relics, and, in the vernacular of the motor industry, they call them clunkers.

With a radio dispatch, if a man of Keeshin's organization is enroute, and there suddenly becomes a big crowd at the Dearborn Station and he is over somewhere else, the dispatcher from the central headquarters of Keeshin's organization calls him and says, "Get your car over to the Dearborn Station. There is a big crowd there," and he scoots right over, and he picks up the crowd.

210 As a result, we are prepared to show there wasn't this awaiting that had been going on with Parmelee, and the railroads were impressed by this.

Now, there is the question of baggage, which is another function of the Railroad Transfer Service. Parmelee made two pickups and deliveries of baggage per day from one station to others in Chicago.

Keeshin offered to make four deliveries so there would be no delay in baggage, and in addition he had to pick up anybody who wanted to have their baggage or trunk picked up, and he would go out anywhere and pick it up in the vicinity of Chicago.

The railroads were impressed with the four deliveries of baggage. Mr. Keeshin suggested the use of trailers, tractors and trailers, and you gentlemen of the jury who drive trucks, I am sure you are familiar with that.

The trailers are left at the station until they are filled up with baggage, and the tractor comes and takes them to the other stations where they go. It makes for easier facility of handling baggage.

All these factors were offered by Mr. Keeshin, which impressed the railroads. They felt this man knows his business, that he is progressive, and Parmelee,
211 through Mr. Morris Markin, its president, didn't offer any of these things.

Yet, several months later when Mr. Markin of Parmelee found out what Mr. Keeshin's bid was, he reduced his to $1.20.

Another factor I forgot to mention to you, when Mr. Parmelee, or rather, Mr. Markin of Parmelee made his original bid with the railroads, he said that because the railroad passenger rate was decreasing, he said, "I want in my bid to have a one cent increase per coupon for every one per cent decrease in passengers carried."

After he found out, as we will show, what Mr. Keeshin's bid was, he took that, what we call the acceleration clause out, but had the acceleration clause been in there, ladies and gentlemen of the jury, today the railroads would be paying about $1.65 per coupon, if that acceleration clause had been in, because the passenger service has completely —not completely, but it has reduced tremendously.

These are some of the factors that we contend and we are ready to prove are what influenced the railroads in giving the contract to Mr. Keeshin's organization and discontinuing it with Parmelee.

212 Counsel for the plaintiff here will attempt to show you that because the railroads gave the contract to Mr. Keeshin's company, that Parmelee had to go out of business competely. We are prepared to show that for almost one year after October 1, 1955, when Keeshin's

company started operations, that for almost one year Parmelee continued to have its cars at every railroad station in the City of Chicago, and the Chicago terminal area.

Their cars were parked either alongside of or in place of Keeshin's cars, and there were times when they had the prior spot and the better spots to attract the passengers coming off the railroads.

They had their agents soliciting passengers. This way, if you are going to that station, they took cash fares. They took coupons, they took anything, and that went on for almost one year, and there is nothing to stop them today from putting their cars at the station just like they put their Yellow cabs, their Checker cabs, and affiliated companies at those stations to take people for a cash fare to another station if they want to go.

They are not out of business, as we will show.

213 As the negotiations were, the railroad committee went on, and Keeshin was able to get a five-year commitment from his union, and Mr. Markin had no contract with the union. The men that worked as drivers for Morris Markin's Parmelee Transportation Company, the plaintiff here, were threatening to go on strike because at first, and we are ready to show that, at first Mr. Markin offered them no increase in pay, which they demanded, and secondly, he finally came up to three cents an hour increase, and the drivers said to him, "If you don't give us a substantial increase, then we are going on strike, and we are going to picket the railroad stations."

The railroad companies did not want to have a strike and picketing of railroad stations and a cessation of this continuous traffic, and they were impressed with the fact that Keeshin had a firm commitment for five years with a labor union.

Mr. Keeshin's contract with the union provided no split shift. In other words, Parmelee's men had a split shift. They would get down at seven in the morning, and they would work for four hours and then they would be off for five hours, and they had to come back and work another four hours.

214 Keeshin provided eight hours of regular work pay, whether they worked one hour or two hours. He paid them an eight-hour day, and other benefits, health and welfare, which Parmelee did not offer its men.

We are prepared to show that most of the men drivers that worked for Parmelee finally came over and are now driving for Mr. Keeshin's Railroad Transfer Service.

These are the factors which show that the railroads wanted Keeshin in place of Parmelee, and we have a lot of testimony from railroad witnesses who will testify to you of the superior service offered by the Railroad Transfer Service over what Parmelee Transfer Company used to be.

I believe that will substantiate our part. We are ready to prove, ladies and gentlemen of the jury, that there has been no public economic injury. Remember that the public does not pay for this ticket, that if anybody stands any increase, it is the railroads and not the public.

They got better service and better equipment, and we have a lot of testimony on that.

Thank you very much.

215 By the Court: Judge Thompson.

By Mr. Owens: If you don't mind, your Honor, I will make my statement first.

And Thereupon Mr. Owens Addressed The Court And Jury In Opening Statement On Behalf Of Defendant Hugh W. Cross, As Follows:

By Mr. Owens: If you don't mind, your Honor, I will make my statement first.

Ladies and gentlemen of the jury, my client in this case is caught like a piece of wheat between millstones being ground.

Mr. Hugh Cross is the third man in the second set of seats back there. Mr. Cross was the chairman of the Interstate Commerce Commission. He has no interest in who got this contract for transportation, but inquiries were made of him, because he is in constant contact with people in the field of transportation, railroads, freight forwarders, people in all the fields of transportation, and he did have conversations with people about this transportation between stations in Chicago.

216 It was not a matter that came within the jurisdiction of the Interstate Commerce Commission, but he was interested in it because of the economic advantage it would be for the railroads to have good service.

It is true that inquiry was made of him as to the status of these negotiations, and he had made inquiry also, and the word that he received with regard to negotiations was passed on.

There was no gain for him out of this and no gain will be shown. He is merely an innocent party who is necessary to the complaint that the plaintiffs have made in this case, and that is the reason he is brought in here.

He is like a keystone in an arch as far as their complaint is concerned, but I am sure when all the testimony is presented you will see he is just an incidental character in this little drama that they have written up to be portrayed in this court.

Thank you.

By the Court: The next defendant.

And Thereupon Mr. Thompson Addressed The Court And Jury In Opening Statement On Behalf Of Defendant Railroads As Follows:

217 By Mr. Thompson: May it please the Court and ladies and gentlemen of the jury: The issue which is being submitted to you, as the Court has already told you, is one of whether or not the public has suffered injury by reason of the negotiations that led to and the awarding of the contract for transportation of passengers here in Chicago.

Before we go any further I want to correct the idea that the plaintiff in this case has been rendering this service for 102 years in Chicago. The plaintiff wasn't even born until 1929, when it came into being.

It was organized down east and started buying up some companies as its subsidiaries, and among them was this company that was doing the transportation work here in Chicago, which had a different name.

It wasn't this company at all, and it bought this business, and since 1929 has been running the business or had been until the contract with Keeshin company was made in 1955.

The story is a long one and a complicated one, but I don't think you need too much of the details now to understand what this is all about, and to see that there is no conspiracy here that they have talked about and to see that there is no loss to the public.

218 In fact, all of the change is a gain to the public.

Without going back too far, I shall drop back only to 1946, which was eight years, or rather, nine years preceding the change of the service, and I will hastily cover the period.

1946, as you know, was the first year after the termination of the so-called World War II—about the 25th world war, but anyway we call it World War II, and in 1946 things were getting back to normal.

The excess of railroad transportation caused by movement of troops and what-have-you was passed on, and

we were back to normal movement of people in the regular ways of life.

The Parmelee Transportation Company, which was, in fact, Mr. Markin, had no contract with its labor except from year to year. Its contract ran from July 1 to June 30th, year after year.

In 1946, as had occurred before, but this time in 1946 when May came around there was no arrangement or agreement with this labor. There was a representation to the railroads that there might be a strike and a cessation of this service.

This service is a service that had been provided by
219 the railroads all these years, because, as Mr. McConnell said, this community is unique in that all railroads carrying passengers terminate in Chicago that come here at all.

220 There is no railroad going through Chicago. They have these six principal railroad stations for the steam lines, the so-called steam. They are not steam any more, but the diesel lines, I guess we will call them now, and then they have the North Shore and the South Shore, those stations of the small interurban services.

The six stations we are concerned with primarily are these principal railroad stations, the North Western over hereby itself on Madison and Canal, and then south of that on Jackson and Canal is the Union Station, which services the Pennsylvania and the Milwaukee and the GM&O, which is the old Chicago and Alton Railroad, and some others, the CB&Q, the Burlington Railroad, and then you come across the Grand Central which is serviced by the B&O, Baltimore and Ohio, and the Pere Marquette and the Sou Line, and so on.

Then over at the LaSalle Street Station where you have the Rock Island system and the New York Central and the Nickel Plate and some other smaller lines, and

then you go to the Dearborn Street Station which services the Santa Fe and the C&EI and the Wabash and a few others, and then on over to the Illinois Central,
221 which services the Illinois Central Lines, which run south in the main and northwest, and also it used to serve the Michigan Central Lines, which is a part of the New York Central system, but I think they are not now served there.

Whether they are or not, there are six stations, and if somebody is coming in from Minneapolis on the North Western Railroad, or the CB&Q Railroad or the Milwaukee Railroad, any one of the three, and wants to go south on the Illinois Central or east on the New York Central, then they have to get from that station over to the other station.

The railroads furnish this as a matter of competition and accommodation to their passengers. It started out, of course, in the old horse and buggy days when old Mr. Parmelee hauled the people around in a horse hack and hauled the baggage around in a horse dray, and then later on, at the end of the century, when automobiles came into use, then another bunch of people bought old man Parmelee out, and they started to motorize the service, and it was motorized during the period from 1905 or 1906 on through to 1929.

It finally became completely motorized and it was
222 in that situation that this Parmelee Transportation Company came into being and bought the business.

The railroads contracted with somebody to render this service. They didn't have the equipment or the men or didn't desire to get in this limited business here. They contracted with somebody to render the service. This somebody was these different companies throughout the years.

When you get down to 1929 and the Parmelee Transportation Company, the plaintiff in this case comes into being, then of course it began to monopolize all street transportation in Chicago by buying the old Parmelee Company, which rendered this service between stations, by buying the Yellow Cab Company, by buying the Checker Manufacturing—the Checker Cab Company, and by establishing the Continental Transfer Company, which hauled the people out to the airports, so that if you traveled at all, you traveled on one of Mr. Markin's companies under the banner of the Parmelee Transportation Company.

All that will be proven, if we get to it.

As I say, there was no assurance in 1946 that this Parmelee Transportation Company would be able to
223 transport passengers between stations, because they didn't have any contract with their labor, and so it went on through the summer with a day-to-day uncertainty as to whether there would be any transportation service or not, and the railroads had to live in that atmosphere of uncertainty because of this labor dispute.
224 Finally, Parmelee made a contract with these people, and they went on for the balance of that year until June 30, 1947.

In 1947 the same thing happened all over again. No contract, and that is no contract by the time June 30th rolled around. No contract in July, and finally, in the late summer, they make a deal with labor again, and they have a contract, and so they go on for the next year around to June 30, 1948.

Mr. Markin then came to the railroad and said in 1947, late 1947 or early 1948, that he didn't have—that he wasn't making enough money out of this business, that he had been charging 85 cents for this coupon, but the

85 cents was not adequate, and he demanded that there be an increase in the payment of this coupon.

This coupon was a part of your interstate ticket. Here is the ticket from Denver, Colorado, to Chicago, and then in between is a little coupon about an inch wide which was this local transportation, and then on down the rest of it was a ticket on to Baltimore, if that is where you were going, so that when you got to Chicago you just tore off this ticket and handed it to the Parmelee Transportation people, and they hauled you to whatever station you were going to.

225 I you had baggage checked, there was a punch in the little ticket which says "Baggage checked" on it like any other ticket you have, railroad ticket, and your baggage was moved from one station to the other station, so that you and your hand baggage went in the local transportation vehicle, and your checked baggage went across in a truck.

In 1948 when the ticket was 85 cents, that was paid by the receiving line. In other words, if you came in on the Burlington from Denver to the Union Station and you wanted to go out on the Illinois Central south, you had to get over to the 12th Street Station, and the Illinois Central picked up the ticket and paid for it, paid the Parmelee people for it, so that the receiving line always picked up and paid this ticket, thereby having the difference in the cost to these different railroads depending on how many passengers were delivered to them by the other railroads, by Parmelee.

226 In 1948, Parmelee represented to the railroads that he was losing money, and he made this demand for an increase of pay. In order to demonstrate to the railroads that he couldn't make any money, he set up a tabulation showing that the price he was then getting for his ticket for so many passengers, that is 1,400,000 passengers, let

us say, just to use a figure, 85 cents for 1,400,000 would produce him so much money and his expenses were so much, and he would have so much profit. But he showed that if this passenger business keeps dropping off so he got only 1,375,000 this next year, I will make less money, and if I get only 1,350,000, I will make less, and he finally gets down to the bottom of the page, and he says that the coupon will have to be $1.50 if the passenger number gets down to 1,120,000, or whatever the figure was.

So that he shows a gradual increase that these railroads are going to have to pay, from the 85 cents then being collected down to $1.50 if the passenger business fell off that much.

Well, this was quite alarming to the railroads because they were already losing money on their passenger service, and they knew this thing was going to keep 227 going. But they argued back and forth, and finally they agreed to increase the charge to a dollar per coupon with the assurance from the Parmelee Transportation Company that the service would be improved, and that there would be some stability about this thing and this labor business would be disposed of.

Well, 1949 rolls around. We are paying them a dollar now, but when June 30 comes, they have no contract with labor, and we lived through another summer without knowing whether we were going to have a truck on the street or a limousine on the street the next day.

So finally, along at the end of the summer, they get a deal with their people, and we go on for another year until June 30, 1950. On June 30, 1950, we have the same merry-go-round. No deal with our labor people; no knowing whether there is going to be service the next week or not.

This time it happened, and we had a strike for six months. The railroad passengers putting up with it, we

hauling them back and forth by taxicabs, and what have you, from July to December. That is 1950. We had a real strike that time.

In 1951 we go through the same merry-go-round
228 again. But in 1951, Parmelee, or Markin, rather, represents to the railroads that he thinks he may be able to make a deal with his labor so that he can have a contract that will go until June 30, 1952, but he is going to have to have some more money to do it. So he finally gets $1.05 for his coupon and makes his labor arrangements.

229 In 1953, he comes back to them again and says, "We are not making any money, I can't keep on going this way." In December he sits down with them and says, "We have got to have $1.25 for this coupon, and we just can't get along without $1.25."

Then in January, 1954, he writes them a letter and lays down the demands that he has got to have $1.25 and if he doesn't get it, he is going to quit the business, and so on.

So the railroads were getting a little fed up by this time, and then is when they appoint this committee in January, 1954 to investigate the situation.

In 1954 we get this demand in writing in January, and the railroads are fed up by this time. They see this thing is going right on out through the roof if something isn't done, so they appoint this committee, one railroad from each of the principal stations.

Of course, North Western, there is only one railroad there so the North Western was on the committee. The largest railroad at the Union is the Pennsylvania Railroad, so it was on the committee. The largest one at the LaSalle Street is the New York Central, so far as the coupons are concerned, at least, so it is on the com-
230 mittee. The B&O represented the Grand Central Station and the Santa Fe the Dearborn Street Station,

and the Illinois Central its own station, the 12th Street Station.

Now, those six railroads were on the committee. Obviously railroads can't sit on a committee. It has got to be some person employed by the railroads. So the passenger agents of the different railroads were assigned to this committee. The passenger representative of the North Western sat on the committee and so on around.

Now, Mr. McConnell was in error when he said that Mr. Padrick was the chairman of the committee. Mr. Padrick wasn't even on the committee. Mr. Bone of the New York Central was the chairman of the committee. He was the man who was the local representative and the local passenger traffic manager in Chicago for the New York Central.

That committee of six railroads was appointed. There were more than six passenger agents on the committee, but six railroads. That committee had this demand before it of the Parmelee people, of Markin, that he had to have $1.25 a coupon to move these passengers across the town.

231 That dispute with Markin continued for four months, trying to get to some agreement. He was demanding that there be $1.25 retroactive to January 1st. That demand was made, as I said, in December orally and then put in writing in January.

They horsed back and forth for two or three months trying to get together on some kind of a compromise; the railroads offering this, Parmelee rejecting it, and Parmelee demanding this. Finally, the middle of April, 1954, they finally compromised and paid Parmelee $1.12½ from January 1 to April 1. In other words, they gave him 7½ cents increase for those coupons that had already been picked up and paid for, and asked him to submit a

separate bill for that. They then paid him $1.20 per coupon from April 1 to July 1, 1954, and the deal was that after July 1, the railroads were to pay him an increase of one cent per coupon for each three cents of increased labor costs, three cents an hour increased labor costs. That is one cent per coupon for each three cents an hour increased labor costs.

232 Well, June 30 comes around, and no contract with labor. We can't tell what the coupon is going to be after July 1 because he hadn't made a deal with his labor people, and he didn't make it in July. He didn't even get it done in August. Along in September, finally, he makes a deal with them and it costs him five and a half cents, I think, or six cents an hour.

Well, that means we have got two cents added to our coupon retroactive to July 1st, so we pay $1.22 per coupon from July 1, 1954, on. That contract was to expire June 30, 1955.

Well, our committee, which had been wrestling with Parmelee to get this thing settled for the half year in 1954, hadn't had time to do anything such on getting new bids in, but they did meet a couple or three times. They met on the first of February, and at their first meeting in 1954 they sat down and made a list of all of the companies in the community that they thought were big enough to do this job.

You will understand, of course, that this had been a monopoly all these years, and there was only one company that was doing it. There was no competition. So anybody

233 that went into the business would have to go out and buy all the station wagons, all these trucks, and hire and organize a new crew. Obviously, it wasn't the easiest thing in the world to get somebody to make a bid on this deal.

So the committee put down everybody that they thought might be interested. They got a list of fifteen or twenty institutions that were big enough to do the job if they were interested. Then after they got this list made, they assigned among themselves, these six fellows on the committee, the job of contacting these folks, one taking a couple of them and another taking a couple, and so on.

They had been appointed by what is called the Chicago Terminal Lines. Now the Chicago Terminal Lines is not an organization at all. It is simply representatives of each of these twenty-one railroads that have terminal facilities in Chicago, sending representatives to any meeting where they talk about common problems.

One of the common problems, obviously, was this transfer contract, so these terminal lines did meet, and it is of that group that Mr. Padrick acted as chairman, informally, by selection of the representatives of the various railroads.

Mr. Padrick was the acting chairman of the Chicago Terminal Lines, which is just a group of representatives.

Now the Chicago Terminal Lines appointed this committee and it, of course, had to make a report to the Chicago Terminal Lines. After they got organized and free, they began to contact these prospective bidders, and among the people they went to was Mr. John L. Keeshin.

Mr. Keeshin had no intimation that he was going to be asked to bid on this job. Mr. Keeshin is engaged and has been for a good many years in the interstate trucking business and in the matter of consolidating less-than-carload lots into carload lots, and so on and so forth, rendering a freight service to not only the railroads but to the public, and so on. He was plenty big enough to handle the job, but had no passenger equipment.

So when they came to him, Mr. Bone, who was chairman of the committee, went over to Mr. Keeshin's office, after making an appointment with him, in March, and asked Mr. Keeshin if he would be interested. Well, of course, being new to him, he asked him something about what it was and he said, "Well, I will take a look at it and make some kind of a survey and decide whether
235 I will be interested, and let you know."

That was the kind of answer they got from all of these twelve or fifteen people they went to.

236 So along about June, nobody had ever called them back. They didn't have any bid yet. So they decided to get out a statement of the job to be done, a sort of specifications of what we need, a proposition or proposal to these bidders. They typed up a two or three page analysis of the job, telling them how many passenger stations there were, what the distance was between the passenger stations, how many trains arrive at the different stations, and how many depart from the different stations, and how many passengers are to be transferred, and how much baggage this amounts to, and so on.

So they had this specification, and then they were asked by the committee, each one of the people, to contact again those they had contacted before, and give them this specification and see if they couldn't get some bids out of them. They told them that the committee itself would have a meeting and discuss this with him.

So the committee did set up at the Union League Club at a room specified two days for hearing each of these persons that showed any interest at all. One company would be invited to come in at 10:00 o'clock in the morning and be given one hour, and another company at
237 11:00, and so on.

Among the companies that came in to talk with the committee to get further information was Mr. Kee-

shin, Jack Keeshin, and he brought along with him one of his men that was engaged in the freight business with him. They met on September 16th with the committee.

Well, all that occurred at those committee meetings on September 15 and 16, 1954 were simply discussions, an orientation, and outlining to these prospective bidders of how big the job was, what they would have to do, what they would have to have by way of equipment to render the service, and so on and so forth.

But each man that showed any interest at all was urged to file a bid, a written formal bid by the 1st of November, I think it was. Well, November comes around and nobody has filed any bid. So the committee gets busy again and calls those people that had shown any interest at all at the September 15th and 16th meetings, and said, "What about this? We want a bid."

Well, Keeshin told them at the September 16 meeting that he was going to organize a crew of men, as Mr. Meserow has told you, to make a survey. He asked the committee to meet with him so he might talk with them about the results of his survey and get some more information from the committee.

They met at the tail end of November, the 19th or 23rd, as I recall it, and went over this in rather some detail, Mr. Keeshin telling the committee what he had found out at the various stations as to the loading platform facilities, the adequacy or inadequacy of the physical properties, the character of equipment he thought would be necessary or would be best to serve the railroads.

He told these people that the railroads had improved tremendously their rail service to their passengers, air conditioned cars, nice appointments, and so on and so forth. He said, "You bring them here into town, you dump them off this fancy train from the west, and you put them

in an old hack to haul them across town, and then you dump them into another fancy train going south or east. You ought to have transfer service here in town that is somewhat comparable at least to the high class service you give them on the rails."

He also said that "Your transfer of baggage is antiquated; that you have got this baggage piled up on the platforms and you are putting it in straight-body trucks and trying to haul it across town, whereas you ought to have small trailers." He said, "I propose to set at each
239 station three 20-foot trailers so that they may be loaded as fast as the baggage comes off of a train. You put it right into the trailer, designated for a particular station, and you put into another trailer designated for another station. Then I propose to have adequate number of tractors to hook onto these trailers and get them over to the stations as fast as the transfer needs to be made."

240 He proposed that he would have radio dispatching for not only the passenger vehicles that haul the passengers from one station to another, but radio dispatching for the tractors that would move the baggage trailer loads.

He pointed out to them that by radio dispatching he would be in constant communication so that if there is congestion at one station, he could move his equipment over there immediately, whereas if there was no service needed at another station, he could move it out.

He also pointed out that he would air condition his passenger vehicles that were moving the passengers. They would be heated in the wintertime and air conditioned cooled in the summer, and so on.

Another thing that had been a bone of contention and dispute with the Parmelee people from year to year was when they were demanding these increases in cost for the

coupons, the railroads were saying, "Well, what evidence have you got that you are losing money, that you can't make any money on this coupon? May we look at your books?"

"No, no, you can't look at our books," and so on. 241 So they wouldn't let them look at the books. Parmelee furnished whatever figures he chose to furnish, and that was the end of that.

Mr. Keeshin said to the railroads, "I not only make my bargain with you, but you can look at the books every day you want to, and I will furnish you an audited statement every six months."

The railroads said, "We don't need one every six months." So he agreed to furnish them one once a year. That is a statement of the certified public accountant's auditing of his books to show whether or not he is making money or losing it.

Mr. Keeshin—you remember now that Parmelee was then getting $1.22 for each of these coupons, and he still had the running contract that he was to get one cent increase in coupons for three cents increase an hour in wages.

Mr. Keeshin bid for the first year of the service $1.20 per coupon, in addition to all this improved service. Of course, his equipment would be a hundred percent new equipment; no secondhand equipment in it.

He promised them that every thirty months, every two and a half years, he would put in brand new equip- 242 ment again, make a complete substitution of equipment as far as passenger vehicles were concerned, and as far as the trucks, as often as they needed it.

Now that is the bid that he filed in writing. I mean, that is the bid he made orally in November, and he said, "I will put this all in writing now and have it to you by the 9th of December."

Well, he didn't get it to them by the 9th of December, but by the 15th he did, and on the fifteenth of December he gave them a written bid in which he said, "It will be $1.20 for the first year and one-cent increase for each five cents I have to increase the wages of my drivers." He said that is a firm bid. There will be no frills about it. It doesn't make any difference if passenger service falls off, that is my responsibility. That will be the bid, $1.20 for the first year, one cent for each five cents of wage increase thereafter for the five-year period.

By the way, he was asking for a five-year contract, of course, because he was going to have to spend a half million dollars to equip this business. He wanted to have a chance to write it off, as he wore it out.

Now that is the status of December 15, 1954. One
243 bid to do this whole job, and that is Mr. Keeshin's.

Nobody else. There was a bid by Landon that they would haul the baggage, but that was only half the job, or a fourth of it. One bid, and that was by Keeshin.

The railroad committee then called Mr. Markin of the Parmelee Transportation Company to a conference, and they said to him, "Now, we are in earnest about this thing. If you want to render this service, we want a proposition of what you are going to charge us after June 30, 1955, and what kind of service we are going to get.

244 That was communicated to him at the end of December. Of course, there was no intimation that they had a bid from Keeshin. They just told him if he wanted the job, he had better get in a bid.

The reason Mr. Keeshin—I don't know what the reason was, but anyway, Mr. Keeshin had committed himself, as I told you, to a flat figure for the first year only. In January, early in the year 1955, there was a contract negotiation among the transfer people and the Teamsters Union

in this community, and there was a three year contract made which covered, of course, the Teamsters' relations with their employers in this community for the next three years. That contract, notice was published of the fact that this had taken place.

Then Mr. Bone, the chairman of the committee, wrote, on January 14, 1955, to Mr. Keeshin and said, "We have been reading about this new deal or new contract that has been made with the Teamsters, and does that make any difference in your bid?"

Well, Mr. Keshin wrote back—and the dates are significant—on January 15, Mr. Keeshin wrote back and he said, "Yes, it makes this difference: Now that I know what the labor charge is going to be for the next three 245 years, I reconfirm the $1.20 for the first year, and I tell you now that the price will be $1.22 for the second year, $1.23 for the third year, the three years of the contract with labor, and it will be only one cent for each five cents of increase in labor after the third year."

That is on January 15. So here is Keeshin on December 15, in writing, making his bid. On January 15, in writing, confirming his bid, and adding more details. There was no bid from anybody else yet.

The committee now reports to the terminal lines. It reports to the terminal lines it has the bid from Keeshin and it has no bid from anybody else; that it is still trying to get a bid from Willett Company, which is a big operator and could do the job if they wanted to, and it was also seeking a bid from somebody else. They had given up on all the rest of them.

Now, on March 15, after some jogging by Mr. Padrick, Markin files a bid—March 15, three months after Keeshin's first bid, two months after his supplemental bid in January.

Markin's bid is $1.20. We will show that he had said that he couldn't do this business at all for less than $1.25 in 1954, and that it was probably going up to $1.50,
246 but he discovers by March 15 of 1955 that he can do it for $1.20 for the first year.

He said, "I want one cent increase for each three cents increase I have to pay my laborers each year, and I want one cent increase per coupon for each one per cent of drop off in the number of passengers that I haul." In other words, he wanted two escalator clauses in his contract. He put them in his bid.

The committee met with Mr. Markin on the 17th of March, 1955, and they spent hours with him, arguing back and forth about his bid. They told him that they were not going to stand for this guarantee of volume of business by paying him one cent per coupon increase for each one per cent drop off in volume of business; that that was out. He didn't take it out notwithstanding they told him that they wouldn't consider it.

That is where the thing stood until April 6th, when Mr. Keeshin wrote a second letter—really a third one, if you count the bid in December a letter—wrote a third communication to the committee in which he said, "I have been studying my bids presented on December 15 and amplified on January 15, and I want to amplify it further by making more specific some of the proposals that I have with respect to this service."
247 As far as the price is concerned, it was still identically the same, but he did make some amplification of his proposals, and that is all that it amounted to really.

He said, that "My bid of $1.20 for the first year, $1.22 for the second, and $1.23 for the third are firm bids, and there will be no variation whatever happens to the volume

of business."

248 Now on May 19, 1955, the committee calls the meeting again, and there are only two live bids by this time, Keeshin's bid and the Markin bid. They set a meeting in the forenoon to talk to Mr. Keeshin and give him a going over about his bid to be sure that everybody understood each other, and in the afternoon they had a full afternoon with Mr. Markin and his group to go over his bid in detail.

That took the whole day, and after that was all over, then the next day, Mr. Markin had a brilliant thought, and he called Mr. Bone, the chairman of the committee, by telephone from Kalamazoo, Michigan, and he said, "I want to amend my bid."

Well, Bone said, "This is a fine time to be amending it. We have been at this thing now for a year and a half, and you were told yesterday that we wanted your last and final bid."

Well, he said, "I want to make some changes in it." Bone said, "Well, I don't know whether the committee will pay any attention to it or not, but I will take the changes and I will pass it on to them." He was chairman of the committee.

So Markin, for the first time, discovered that he could do this for $1.20 for the first year, $1.22 for the
249 second year, $1.23 for the third year, and then he adds $1.24 for the fourth year, and $1.25 for the fifth year.

So that here are two men bidding for this job on a five-year contract. The elements to be considered, of course, are the elements of quality of service and cost of service and also trustworthiness or continuation of service.

Keeshin in the meantime has this three-year contract with labor and assurances of Mr. Fenner of the union that he was doing business with that they would have the

same kind of peaceful relations that they had had in his freight line of business.

Markin had no contract with his labor at all, not even for that year which ended on June 30, 1955, and certainly not for any of the successive years. The railroads were to face again this threat of discontinuance of the business.

June 3rd, the Committee meets, and June 3rd the committee votes, and they vote to award the contract to Mr. Keeshin. On June 13 the Terminal Lines met and the Terminal Lines adopted the committee report.

Now that, I think, shows very decidedly that the public interest was served. In other words, it was improved
250 by these negotiations which resulted in the awarding of the contract to the Keeshin Company and not that it was damaged, which is the issue presented to you.
251 There were communications between various parties respecting this contract, but that has nothing to do with whether the public injury occurred or not in this particular period, but I do want to correct one thing, that I think the evidence will show that Mr. McConnell was in error when he said that these railroad presidents, who made the final decision, as he said, in these different, for these different six railroads, had knowledge of how the other fellow was going to vote, and so on.

The truth is that Mr. Bone of the New York Central had unqualified authority here in Chicago to make the decision himself and did not have to go and did not go to Mr. Perlman who was the president of the New York Central in New York.

He did communicate with the vice-president of the New York Central, assistant vice-president, Mr. Baird, that he had made up his mind to vote for Keeshin, and Mr. Baird communicated to Mr. Nickerson, the vice-presi-

dent for traffic, and Mr. Nickerson O.K.'d what Mr. Bone had already decided to do and said that was O.K., so Bone's judgment to vote for Keeshin was Bone's judgment to vote for Keeshin, confirmed to be sure by his
252 superior, Mr. Nickerson, vice-president for traffic generally.

As far as the Pennsylvania is concerned, Mr. Holt here in Chicago was also commissioned to use his own judgment and to make the best deals he could. He consulted with Mr. Comer, the general passenger traffic manager down in Philadelphia about it, but Commer only O.K.'d what Holt decided to do anyway, so no president of the Pennsylvania had anything to do with this.

Going on down the sea coast over there, Mr. Simpson of the Baltimore and Ohio Railroad had commissioned Mr. Whittington, his general passenger traffic manager, to make the decision, and Mr. Simpson at no time gave Mr. Whittington any instructions as to how to vote.

Mr. Whittington made up his own mind as to how to vote, and he voted for Mr. Keeshin, and at no time ever had any doubt as to who he was going to vote for after he heard the two men, as far as his testimony showed.

Coming this way you get to the Illinois Central, and the Illinois Central's decision was made by the passenger agents, Mr. Hearne and Mr. Smart, and they communicated with Mr. Trovillion, the vice-president for
253 traffic, and he said, "Whatever you have decided to do is O.K. by me, and you go ahead and vote in the best interests of the Illinois Central."

Mr. Wayne Johnston, a friend and acquaintance of Mr. Hugh Cross, and they graduated, both of them, from Illinois University down at Champaign, or Urbana, and Cross was in the legislature and the Speaker of the House in Illinois, and then he was Lieutenant Governor for eight years, and then he went to Washington as a Com-

merce Commissioner, and during all of that time Wayne Johnston had known him, and they had been friends, and so they did talk about these different things, but Wayne Johnston's testimony is he never suggested to his people how they should vote on the transfer contract, and that the passenger department decided it.

254 Mr. Gurley at no time discussed, outside of the railroad, this matter of the transfer contract with anybody, but he did communicate with his folks down the line in the passenger department about this transfer thing, and he found out that Mr. Sloan, the assistant passenger agent who had attended these meetings had thought they ought to stay with Parmelee because there wasn't enough difference in the two bids to justify the change, but Mr. Gurley decided that that wasn't the way to look at it, that it was through Keeshin's bidding that they got the price down to where it was or it would have gone right on out through the ceiling, and he decided that it was in the interests of the railroad to vote for Keeshin and so ordered Mr. Sloan, and Mr. Sloan did it.

The only president of any of the six railroads who issued an order how to vote was Mr. Gurley, and there was no doubt about how he felt they ought to vote, nor was there any doubt about the order he issued.

Then you go on over to the North Western, and Mr. Feucht was contacted by Mr. Cross, and they had a telephone conversation, but Mr. Feucht at no time told how anybody should vote. He called in Mr. Brennan, the general passenger agent over there, and talked to

255 Brennan about it.

After Brennan sized up the situation and reviewed the facts, he informed Feucht he thought they ought to vote for Keeshin, and Feucht said, "You vote the way you think would be to the best interests of the North Western," and that is the way that vote was taken.

That is the story in a nutshell. The public interests have been greatly served by this change and by the stability that has been established with no threat of a strike every year and with reduced costs of the service and with an improvement of the service.

There is no syllable of testimony that can be produced, I think, that shows any injury to the public, any public injury or any kind or character.

Thank you.

By the Court: I will give the jurors a ten-minute recess.

By Mr. Keating: Your Honor, I would like about one minute.

By the Court: All right; I am sorry.

And Thereupon Mr. Keating Addressed The Court And Jury In Opening Statement On Behalf Of Defendant, The New York Central Railroad Company, As Follows:

256 By Mr. Keating: Ladies and gentlemen, and your Honor, I represent the New York Central Railroad Company. There are six railroad defendants in this case, and the only one I represent is the New York Central. No one else represents the New York Central but myself.

257 Therefore, as to what Mr. Bone's authority is, I will get to that in a moment.

I think we have cleared up one thing here, and that is the outgoing railroad is the one who pays the transfer company, be it Markin or be it Keeshin, the $1.20 or the $1.25, whatever the rate happens to be.

There is no secret in this case or anywhere else but that the New York Central and the Pennsylvania roads are competitive, that they compete geographically principally from Chicago to New York.

If a passenger comes into Chicago from the west on the Burlington at the Union Station and only walks a few feet and gets on the Pennsylvania. He has no need to transfer.

Therefore, it is to the advantage of the New York Central to have this transfer service so the passenger gets off the Burlington at the Union Station and then can transfer over free of charge to him, to the La Salle Street Station for transportation on the New York Central.

As a result of that arrangement, the New York Central Railroad at this particular time in question, I
258 believe for perhaps all time, has been the largest contributor or payer to the Parmelee company. I believe the New York Central paid approximately 24 per cent, and the next largest payer was the Baltimore and Ohio of 10 per cent.

As a result of the large share paid by the New York Central when this committee of six railroads was selected, the largest passenger carrier from each of the six terminals, the New York Central, I believe the evidence will show, was named as chairman because of its position.

Nevertheless, as chairman, the New York Central representative had one vote as did each of the other five members. There was a committee appointed in 1951, and the committee investigated the Railroad Transfer Service and contemplated an improvement of service and a change at that time. Nothing materialized.

Again in 1954 a committee was appointed, and after a year and a half, the committee eventually voted for Mr. Keeshin after all these transactions took place that have been described to you in detail.

As far as Mr. Bone was concerned, he was the New York Central representative on the committee. He had

the authority, as far as his railroad was concerned,
259 to bring the negotiations up to the threshhold of completion and then make his recommendation to a Mr. Baird, who you, no doubt, will hear about, in New York.

Mr. Baird could either approve or reject the recommendation, and Mr. Baird turns around and gives it to his superior, a Mr. Nickerson, who approved or disapproved the recommendation.

The fact is, Mr. Bone recommended Keeshin, and Mr. Baird concurred, and Mr. Nickerson agreed, and the New York Central voted for Keeshin, and contrary to what Mr. McConnell said, as far as the New York Central is concerned, the recommendation of the New York Central representative on the committee was not overlooked by his superiors.

As a matter of fact, the vote of Mr. Bone was in the interests of the public in the better service and initially at least the lower fares as has been described to you before.

Thank you.

260 By the Court: We will take a ten-minute recess.

(Whereupon a short recess was taken, after which the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By the Court: I am anticipating an offer of proof. Am I correct in my anticipation?

By Mr. Meserow: I think you are correct.

By the Court: I am speaking to Mr. McConnell.

By Mr. McConnell: I don't know how to do it, your Honor, except to start with it in front of the jury and then your Honor rules, and then we take the jury away and go on from there.

By the Court: I have no objection in doing it any way you want. You mean you will start an offer of proof?

By Mr. McConnell: Yes. The Rule says I have to put the witness on the stand, have him sworn in the presence of the jury and then start examining him.

By the Court: All right, bring out the jury and put your witness on the stand.

By Mr. McConnell: I don't know any other way to do it except by stipulation, and the judge says he wants it done right, and that is the way it is going to
261 be done. It may take up some time, but I can't help it.

By the Court: That is all we have here is time. Bring out the jury.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By Mr. McConnell: Your Honor, I want to offer in evidence the deposition taken prior to trial under the Rules of this Court, of Mr. Charles E. Quackenbush, who was an employee and managing agent of the Chicago and North Western Railroad.

Most of this deposition, the proof was taken on the issue of conspiracy. There are preliminaries to it that I suppose would be admissible on any issue raised in the case, so I would like to have Mr. Borst act here in the capacity of Mr. Quackenbush, and I ask the questions to him, and we will see what develops.

By Mr. Meserow: If the Court please, I would like—

By Mr. Thompson: He can get his name and address.

By Mr. Meserow: All right.

By Mr. McConnell: I had not asked him a question yet. I am starting with Page 108, the direct examination of Charles E. Quackenbush, duly sworn by
262 notary public Kay Arboit, and the first question is as follows:

(The deposition of Charles E. Quackenbush was thereupon read, Mr. Thomas McConnell reading the questions and Mr. Borst reading the answers:)

"CHARLES E. QUACKENBUSH, duly sworn by notary public Kay Arboit, testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and your address?

A. Charles E. Quackenbush, 400 West Madison Street, Chicago 6, Illinois. It is my business address.

Q. Mr. Quackenbush, are you employed by the North Western, the Chicago and North Western Railway Company?

A. I am.

Q. And how long have you been employed by that railway?

A. Over forty years.

Q. And in what capacity do you now occupy?

A. General passenger agent.

Q. How long have you occupied that capacity or the assistant general passenger agent's capacity, approximately?

A. Oh, I think approximately seven or eight years.

263 Q. What are the general duties of the general passenger agent or his assistant?

A. Well, it could vary on the knowledge that the man has.

Q. One of the responsibilities that he has is the handling of passengers and their baggage at transfer points?

A. Yes."

By Mr. Thompson: Now, if the Court please, Mr. McConnell announced that he was going to read the deposition of Mr. Quackenbush, who was a managing agent, which I suppose means that he expects to read

it under Section 43(b), isn't that right, of the Federal Rules of Civil Procedure?

We object to the examination of Mr. Quackenbush by deposition at all, because Mr. Quackenbush, by our production, is here in the court room and by their request he is here, and we object to reading his deposition at all, and we ask that he be put on the stand and examined.

Secondly, we object to reading it under Section 43(b), because he is not a managing agent and never has
264 been a managing agent of this corporation and can't be examined adversely, and up to this point those are my two objections.

By Mr. Meserow: I would like to join the objection, too, your Honor, for the added reason—

By the Court: I think we have a rule of court here that permits the reading of depositions for any purposes they want, if it is relevant and material to the issues before the Court or the jury.

By Mr. Meserow: Mr. McConnell announced that the deposition of Mr. Quackenbush goes to the conspiracy.

By the Court: When he gets to that portion, make your objection, and I will pass upon it at that time.

By Mr. Meserow: Therefore, I make my objection on the ground it is irrelevant and immaterial to the issues as ruled on by your Honor, and that the only purpose of Mr. McConnell presenting this deposition is to circumvent the ruling of this Court.

By the Court: When he gets to the question
265 touching upon the conspiracy, make your objection, and I will make my ruling, and so far I have not yet heard one single question that touches upon the conspiracy, unless Mr. McConnell wants to say to me that this is the purpose of it, and then I will make my ruling.

By Mr. McConnell: I am not trying to circumvent your Honor's ruling. I am trying to get a ruling; that is all.

By the Court: I am trying to pass upon the law as I see it.

By Mr. McConnell: I understand that, and we have no problem at all.

By the Court: Keep on reading, and when we get to the question of a conspiracy—

By Mr. Thompson: If the Court please, we would like to be heard on this business of whether they can read a deposition without having some foundation laid for it. Of course, the rule says that you can read a deposition for any purpose, but that is when it is contemplated when the witness is not here, when the witness is dead or absent or something else. The man is not
266 a managing agent. They have not shown that he is, and I submit they can't show it. They certainly can't examine him if they called him on the witness stand adversely under Rule 43(b). They have to make him their own witness.

By the Court: May I hear the rule, please?

I will excuse the jury again, please. Relax for a while.

(And thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

267 By the Court: I am waiting for you, Judge.

By Mr. Thompson: The Rule about depositions, which is Rule 26, says:

> "Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness."

They are not reading it for that purpose. Then, of course, there is also the provision you can read a deposi-

tion for the purpose of admissions. Well, this witness has no authority to admit anything.

By the Court: May I interrupt, Judge Thompson, for a second? I am going to point out to you which one I am thinking about, and let me say for the record in the absence of the jury, I am trying not to be detoured from the major issue in the record now.

If I am going to exclude that under my original ruling, I don't want to be detoured on a technical question of the admissibility or propriety of a deposition.

Here is the one I have in mind.

268 By Mr. Thompson: 26 is the one about depositions.

By Mr. Stevens: 26(d)(1).

By the Court: I think it is (3).

By Mr. Meserow: (3).

By the Court: (Reading):

"The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: One, that the witness is dead; or two, that the witness is at a greater distance than one hundred miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition . . ."

By Mr. Thompson: Or:

"3. That the witness is unable to attend."

By the Court: That isn't the one.

By Mr. Stevens: 26(d)(1), your Honor.

By Mr. Thompson: I just read (d)(1). Maybe it is for the purpose of contradicting and impeaching:

269 but he is not doing that.

By Mr. Stevens: 26(d)(1), your Honor:

"Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness."

270 By Mr. Thompson: He is not any one of those things. General passenger agent—not manager, and he doesn't manage anything. He has the same authority as any other hired man over there, but he is not an officer or managing agent.

By Mr. Stevens: He had authority to make this contract.

By Mr. Thompson: He did not. He never claimed to have authority to make the contract.

By Mr. Meserow: Paragraph 3 you started to read is the one that is applicable, 26(d)(3).

271 By the Court: Will you argue your point again?

Mr. Thomas McConnell: Let me talk to this, if I may.

By the Court: Please.

By Mr. McConnell: Judge Thompson took two positions. First, he said we couldn't use it because he brought him into the courtroom.

Well, now, that is taken care of by Section 26(d)(2):

"The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by adverse party for any purpose."

By the Court: That is the one I had in mind.

By Mr. McConnell: For any purpose. You can read their deposition; you can read it for impeachment, for admission. Judge Thompson has done it and I have

272 done it time and time and time again.

By the Court: That is the section, and my impression has been the only question under this limitation is relevancy or materiality.

By Mr. Thompson: No. He is not a managing agent nor an officer nor a director, and it is only where you

can read it under Section 43(b) that you can do it under Section 26(d), too.

By Mr. McConnell: All right. Now, Judge Thompson—

By Mr. Thompson: He is not a managing agent, and they have got to prove he is before they can read his deposition.

By Mr. McConnell: He is an assistant general passenger agent.

By Mr. Thompson: That is right.

By Mr. McConnell: And that under the authorities, and there are many, many of them, is a managing agent. Anybody that has anybody under his supervision under the decisions is a managing agent, under this rule.

273 By Mr. Thompson: We have better authority that he isn't one.

By Mr. McConnell: We have got lots of law on that.

By the Court: When do you begin asking questions about the conspiracy, Mr. McConnell?

By Mr. McConnell: I can't tell your Honor specifically. I just have to proceed with it.

By Mr. Thompson: The witness is here. Let him put the witness on the stand and examine him as to the matters that are in issue on the trial here.

By Mr. McConnell: I don't want to put the witness on the stand. I have got his deposition.

By the Court: I will let him proceed with the deposition.

Bring out the jury.

By Mr. Thompson: We don't need to state an exception, I guess, but I do except to the ruling.

By the Court: That will be noted.

274 (Whereupon in the presence and hearing of the jury the following proceedings were had:)

275 "Q. What capacity do you now occupy?

A. General passenger agent."

By Mr. McConnell: That is the first page, page 108.

By Mr. McConnell: (Reading)

"Q. How long have you occupied that capacity or the assistant general passenger agent's capacity, approximately?

A. Oh, I think approximately seven or eight years.

Q. What are the general duties of the general passenger agent or his assistant?

A. Well, it could vary on the knowledge that the man has.

Q. One of the responsibilities that he has is the handling of passengers and their baggage at transfer points?

A. Yes.

Q. And you specifically had the job of supervising and determining the adequacy of the transfer facilities afforded in the Chicago terminal area?

A. Generally, yes.

Q. Were you served with a subpoena to appear and bring certain named documents to these proceedings, the subpoena having been served sometime on March 12, 1956?

276 A. About that time.

Q. Will you look at this document which I would like to have the reporter mark for the purpose of identification as Quackenbush Exhibit 1, and tell me whether or not this is a true and correct copy of the subpoena served upon you?

A. I would say, to the best of my recollection, it is.

Q. Mr. Quackenbush, pursuant to the request and demands made by this subpoena, what efforts did you make to collect and bring together and make available here in the hearing room the documents specified in that subpoena?

A. Well, the files, the more or less running files on this particular subject, were kept in our general files, which I understand that you have.

Q. Had you collected that? Who collected those files in response to this subpoena?

A. I think Mr. Stewart did. I know I did not collect them.

Q. So that you would not really be in a position to determine whether or not these constitute all of the documents that satisfy this subpoena?

A. Well, since that time I have had an oppor-
277 tunity to go over some of this and I feel that it is.

Q. Let me just ask you whether or not you have included in the documents that have been collected, all correspondence, communications, reports received from passengers, passenger travel agencies, hotels in the City of Chicago, associations of businessmen, public transportation companies or the traveling public relating to the Chicago transfer service rendered during the period from January 1, 1954 to and including the date of the subpoena, which was March, 1956?

A. Yes. I would say it was all in there.

Q. All of the complaints that have been received in connection with the transfer service, either before or after October 1, 1955?

If they have been received, they are included in these papers, to the best of your knowledge?

A. To the best of my knowledge, they are.

Q. Did you participate in the committee that negotiated the five year contract with the Keeshin interests?

A. I did.

Q. Are all of your notes and memoranda in connection with those negotiations included in these files?

A. They are.

Q. Mr. Quackenbush, as general passenger agent and as assistant general passenger agent before that,
278 you were assigned to serve on the committee of the Chicago Terminal Lines, were you not?

A. That is correct, I was. I mean, I want to clarify that, the North Western Railroad was to serve.

Q. Yes, I understand, and you represented the North Western?

A. And I represented the North Western Railroad.

Q. On that group of railroads that call themselves in a somewhat informal way the Chicago Terminal Lines?

A. That is correct.

Q. Did you also represent the North Western Railroad on sub-committees of that group?

A. I did.

279 Q. Did you also represent the North Western Railroad on subcommittees of that group?

A. I did.

Q. And who else was with you on those committees and subcommittees from the North Western?

A. From the North Western? Mr. Stewart as well as Mr. Brennan attended some of those mettings.

Q. Do you know whether Mr. Brennan ever attended a meeting prior to May 15, 1955?

A. I do not.

Q. Was it your custom, however, to attend these meetings as the representative of the North Western?

A. It was my custom to attend them if I were available.

Q. Otherwise it was Mr. Stewart?

A. Mr. Stewart.

Q. Well, to whom did you report the results of these meetings?

A. Mr. Brennan.

Q. Did you ever report directly to the vice president in charge of traffic?

A. No, sir.

Q. Did you ever report directly to the president of the railroad?

A. No, sir.

280 Q. Your reporting was directly to Mr. Brennan?

A. That is right.

Q. Now, what would happen if Mr. Brennan was out of town? Would you report to someone else, or would you await his return?

A. I would await his return.

Q. Had you participated in studies, investigations and negotiations involving the Parmelee Service and transfer rate in previous years?

A. Yes, I had.

Q. Did you participate in the study in 1946 that was made by passenger traffic agents in compliance with a request made by the railroad executives?

A. I did.

Q. Are you familiar with the letter that Chairman Siddall wrote to Mr. Johnston, who was president of the Railroad Executives group in February 1946?

A. I don't recall at the moment."

Then a document was identified as Quackenbush Exhibit 2. Have we got that document?

By Mr. Stevens: All the original exhibits are in the envelope.

By Mr. McConnell: (Continuing reading)

"Q. Are you familiar with this report?

281 A. I recall it now.

Q. Did you participate in the preparation of this report or in the negotiations that preceded it, Mr. Quackenbush?"

By Mr. McConnell: Then Mr. Thompson objected that that was a double question.

"A. I was just going to say, let's confine it one way or another.

Q. Did you participate in the investigation that preceded the preparation of this communication?

A. When you speak of did I participate, do you mean I as an individual in connection with this letter here?

Q. In connection with the hearings or meetings that the committees held preceding the preparation of the letter.

A. Well, I, in those days, was chief clerk in the passenger department, and I attended a meeting which might have been the forerunner of this letter.

Q. But your participation was nominal, if at all?

A. That is right. We were just another railroad over there.

Q. All right.

A. Expressing our views.

Q. All right. Then, let me direct your attention — 282 well, did you express your views in conformity with what is transcribed here?

A. No. When we attended that particular meeting, it was in connection with something else.

Q. Then let me direct your attention to the meeting and negotiations that occurred in 1951 when Parmelee had suggested an increase in its transfer charge of a dollar to a dollar five. Do you recall that you represented the Chicago and North Western on the sub-committee appointed at that time?

A. I wonder — is your date right on that?

Q. I think so. Let me mark a few papers for you, first."

Then I asked to have the documents marked. I was talking to the court reporter then.

"A. I have given — you gave the figure of $1.05, which I question, is that correct?

By Mr. Freeman: That is what I did say.

By the Witness: Was it right?

By Mr. Freeman: The negotiations in 1951 I thought involved an increase of a charge from $1.00 to $1.05. If that is not correct, I wish you would correct that.

283 "A. In 1951 in the negotiations, they followed after the 1950 strike from 85 cents to $1.00. You might check it with your colleagues behind you there.

Q. All right. My records indicate in 1948 the charge was increased from 85 cents to $1.00, but irrespective of what the increase was, let me direct your attention to the organization of the sub-committee on which you served. Do you recall that?

A. Yes, I do.

Q. And did that sub-committee include six railroads, namely, the Santa Fe, the B&O, Illinois Central, Pennsylvania, New York Central, and the Chicago and North Western?

A. I believe it did.

Q. And you were the sub-committee member representing the North Western?

A. That is correct.

Q. Did you participate in the various meetings and negotiations of that sub-committee in 1951?

A. I would presume that I did.

Q. And did that sub-committee, in considering the request for an increase from whatever it was, invite various other carriers in to see whether or not they could do the job cheaper or better?

A. Can I look at this here?

284 Q. Sure.

A. You have a copy of it. In 1951 we interviewed other people.

Q. Well, Exhibit 4 would indicate that you interviewed the Chicago Gray Line and the Railway Express Agency.

A. That is right.

Q. What else did that committee do, as you remember it?

A. Well, we asked other transfer companies if they would be interested in it at that time.

Q. Well, did you make a selection of companies that you thought might be capable of doing the job on the basis of their experience and general character?

A. We did.

Q. Did you feel that there was some organizations in Chicago that could not appropriately be requested to bid on this because of the magnitude of the transfer work that was involved?

A. No; we didn't bar anybody from bidding.

Q. Would you regard the second page of Exhibit 4—and II direct your attention to the expression in paragraph 4:

'The magnitude of the work to be performed necessarily narrows the field of capable organizations pos-285 sessing the ability to perform the service,'

and so forth?

A. Yes, sir.

Q. So did you narrow the field and restrict your invitations to the carriers that are indicated therein?"

By Mr. McConnell: Then Judge Thompson made an objection that "What he says in his letter is that the situation narrows the field, not that the committee narrowed it. We object to asking questions on assumptions of fact which are without basis."

So I guess the question was withdrawn and another question was asked.

By Mr. McConnell: (Reading)

"Q. Mr. Quackenbush, do you recall whether or not the Gray Line Company suggested the use of bus equipment in order to transfer passengers?

A. That was the equipment they suggested when we approached them.

Q. And do you remember what the reaction of the committee was to the use of bus equipment?

A. Well, at that time the reaction to it was that we didn't favor buses, the thought being if a bus was employed, there might be a considerable waiting period.

286 By that, I mean fifteen or twenty minutes perhaps to load a bus to take it over, whereas, with a smaller vehicle there would be a shorter waiting period to take the passengers over.

Q. That is approximately what the committee incorporated in its report that they favored the more flexible type of service rendered by limousines as against buses?

A. That is right.

Q. Did you share in that opinion?

A. Yes. We only have one thing to sell, and that is service.

Q. Do you know what action was taken on this committee report?

A. Well, it was accepted.

Q. Accepted by the Terminal Lines?

A. That is right.

Q. Then, can I turn your attention to the more recent negotiations in 1954? First, let me ask you, in general, whether it wasn't true that the committee, the Chicago Terminal Lines' committee or the sub-committees in considering the various transfer services, felt that the pickup and delivery services rendered by Parmelee should stand on their own feet so far as financial support is concerned?

287 Did I make myself clear?

A. No, sir, you did not; I am sorry to say.

Q. Was it the attitude of the committees on which you served that the transfer charge or the coupon charge

would not be fixed at an amount to overcome deficits in the pickup and delivery service?

A. The pickup and delivery, to the best of my knowledge, was supposed to stand on its own feet.

Q. And, in fact, that attitude was accepted in various negotiations in 1954 and in 1951?

A. That is right.

Q. During the course of these various negotiations were financial statements and schedules submitted by the Parmelee company as requested by the committee?

A. I am not so sure whether there were or not.

Q. Well, do you recall in 1954 that rather elaborate presentations of financial material were presented by Parmelee and transmitted to all of the members?

A. Presented by Parmelee—yes, that is right.

288 Q. And in 1954 there were profit and loss statements from this operation submitted to the committee."

Then there is colloquy between counsel, and Quackenbush Exhibits 5, 6 and 7 were identified. Then the question was rephrased.

"Q. Will you look at Quackenbush Exhibits 5, 6 and 7, please, for a minute."

Then there was some more colloquy between counsel, and the question apparently was again rephrased.

"Q. Mr. Quackenbush, the question I put to you was do you recall the document, Exhibit No. 5, having been prepared by the Association and transmitted to the various parties, a copy of which you received?

A. Yes, I do.

Q. Is it true that this document contains a whole series of schedules dealing with various phases of the Parmelee organization and prepared by Parmelee and submitted to the Association for transmittal to the members?

A. I presume it covered the entire request which we probably made on the Parmelee Company at that time.

Q. Mr. Quackenbush, as a matter of fact have you ever made a request for information from Parmelee 289 that you didn't secure in the course of negotiations?

A. No, I can't say that I ever have.

Q. Or that the committee did?

A. Well, that, I wouldn't know what the other members might have asked for. You can appreciate that.

Q. I can. I meant, the committee acting as a committee, while you participated.

A. No. I think that anything the chairman of the committee might have asked for, he got.

Q. And do you have any recollection or familiarity—I am perfectly aware that I am taking you back several years, and I don't mean to do it any further than this, but do you have any recollection or familiarity with the financial statement that has been marked Quackenbush Exhibit No. 7, and do you remember receiving that from Parmelee?

A. At the moment, I do not.

Q. All right. Do you have any recollection of having received schedules prepared in the form of and copies of Quackenbush Exhibit 6 during the course of the 1954 negotiations?

A. I remember this rather vaguely.

Q. Now, I would like to direct your attention to your activities on the subcommittee which was formed 290 some time in 1954 and which negotiated with various carriers, including Keeshin and Parmelee and others and which ultimately led up to the 1955 decision.

Did you attend most of the meetings of that subcommittee?

A. I did.

Q. And where you did not attend, Mr. Stewart attended, or, as we will find in the last meeting or two, Mr. Brennan attended?

A. That is correct.

Q. Were you at the meeting on September 15 and 16 when the Railway Express Agency and the Landon Cartage and the Gray Line, Keeshin and others, were interviewed in 1954?

A. I am not sure as to whether I was at—if there was more than one meeting—

Q. You are absolutely right. My notes show Stewart attended that meeting, and I shouldn't have asked that question. Mr. Stewart attended for Mr. Brennan, and so you were not at that meeting, and I will pass that.

What was the first meeting that you attended at which Mr. Keeshin appeared and presented any part of his proposal? Here, I think I can be even more helpful. I think the first meeting that I have a note on that you attended was November 23, 1954.

Apparently you didn't attend a couple of these meetings but had Mr. Stewart attend.

A. That is right. I had Mr. Stewart start out attending these meetings, because we felt at that time we would turn this subject of transfer over to Mr. Stewart.

Q. I see; and why did you feel at that time that you were going to turn it over to Mr. Stewart?

A. Because I was asked to take up other duties.

Q. What other duties were they?

A. Train service.

Q. Do you recall your first meeting with Mr. Keeshin?

A. No, I do not.

Q. Do you recall Mr. Keeshin suggesting that baggage could be handled on the basis of pickup and delivery between stations, I mean, on an hourly basis, every hour?

A. I don't recall that.

Q. Do you recall that Mr. Keeshin suggested that his service would be by means of trailers, and that the railroad employees would be required to bill, sort, and load and unload the trailers?

A. You have a double question there.

292 Q. I am sorry; I do. I will try and simplify it.

A. If you want to break it down to trailers, that is something else.

Q. Do you recall the type of equipment that Mr. Keeshin proposed to use?

A. In connection with the transfer of baggage?

Q. In connection with the transfer of passengers first.

A. Passengers?

Q. Yes.

A. He suggested station wagons.

Q. Did he also suggest buses?

A. I don't recall that he did.

Q. Did he suggest the use of VolksWagons at the beginning?

A. No; he brought VolksWagons out to let us pick what type of vehicle we wanted.

Q. But you don't recall that he ever suggested the use of buses?

A. No, sir.

Q. Do you recall that he suggested a five-year contract without any change in rates?

A. No, sir, I do not recall that.

Q. You do not?

293 A. No.

Q. Do you recall his suggesting that he would use the Parmelee men if he got the contract?

A. I don't recall what he intended to do as far as setting up his personnel was concerned.

294 Q. All right. Did you make any memoranda of these meetings that you attended of the sub-committee?

A. Not unless they are in those files there.

Q. I have been unable to find them. Can you determine which of these files belongs to you?

A. These three here are ours, the Passenger Traffic Department files.

Q. Do you know, without too much difficulty, whether or not there are any memoranda in there dealing with these committee meetings? We have been able to find none.

A. You have?

Q. We have not been able to find any.

A. If you have not found them, I presume there are none in here.

Q. It would be unfair to take my version of it as authoritative.

Let me ask you this, and see if I can shorten it, Mr. Quackenbush:

To the best of your knowledge and ability to recollect, do you know whether or not there were any such memoranda prepared of these sub-committee meetings that either you or Mr. Stewart attended?

A. I don't believe there was.

295 Q. Are you familiar with the proposal that was made in writing by Mr. Keeshin on December the 15th, 1954?

A. Yes, I am familiar with it.

Q. Do you know what equipment he proposed for passenger and baggage handling?

A. I don't know what equipment he proposed at the moment."

By Mr. McConnell: Then the report was marked as Quackenbush Exhibit No. 8.

By Mr. McConnell: (Reading)

"Q. I ask you, Mr. Quackenbush, if, in general, you recall the report made by the sub-committee on which you served on June 3, 1955?

A. Do I recall this report?

Q. Yes, sir.

A. Yes, I do.

Q. Do you recall that Mr. Keeshin suggested the use of station wagons with heaters and air conditioning on December the 15th, 1954?

A. No; I don't recall as to what meeting with Mr. Keeshin in which he suggested that.

Q. Well, I intended for you to refer to the written proposal that Mr. Keeshin made on December the 15th, 1954, which is included as an enclosure in the report.

296 A. Yes; I do recall it now that I have it before me.

Q. Was the matter of the heating equipment that the vehicle, the station wagon had, a factor?

A. Well, it would be a factor as far as winter weather was concerned.

Q. Had you observed the operation of the station wagons during the winter?

A. Of 1954?

Q. Of 1955, from October 1 of 1955 to 1956.

A. I did not use the present vehicles during the winter months at all.

297 Q. Do you recall how the station wagons operate as far as putting baggage in is concerned?

A. Yes, they put it in the back.

Q. Is there any separation between the passenger department, the passenger area and the baggage area?

A. You mean to make them airtight or something like that?

Q. Yes.

A. No, not to the best of my knowledge.

Q. So that in the event the back of the station wagon were opened to put baggage in on a cold day out in the

street, then the cold air would come right into the vehicle, would it?

A. I presume it would be possible.

Q. Was the air conditioning of these vehicles a factor you gave any consideration to?

A. Yes.

Q. Have you observed the operation of the air conditioning equipment during the past summer of 1956?

A. Yes.

Q. Was the air conditioning in operation?

A. Yes, it was.

Q. Was it in operation throughout the summer?

A. That I don't know. I don't ride every day.

298 Q. Were there many, many times when the air conditioning was not in operation during the summer?

A. That, I don't know.

Q. Do you know what type of air conditioning equipment was installed in the station wagons?

A. No, I don't.

Q. Do you know whether it was a big or a small unit?

A. I don't know.

Q. Have you made any observation or determination of what type of air conditioning was installed?

A. No, I have not.

Q. Do you know whether or not the VolksWagons were air conditioned?

A. They were not.

Q. You made an inspection of the equipment that was offered by Keeshin on June 2, 1955, did you not?

A. That is right.

Q. That inspection was made at the Union League Club, or at least you assembled there?

A. We assembled there to go out where the equipment was located.

Q. Where was the equipment located?

A. I don't recall offhand the address out south now.

Q. What type of equipment did you view at that time?

299 A. He showed us the trailer, the tractors. He showed us two types of station wagons, as I recall now. I believe it was a Pontiac and a Ford. He also showed us the VolksWagon, and he also showed us a bus, a school bus I am speaking of.

Q. Has he since installed several school buses in his operation?

A. That I don't know.

Q. Do you know what the operation is now, Mr. Quackenbush?

A. Yes; as far as we are concerned, we are getting these Ford station wagons over in our place as far as passenger handling is concerned.

Q. Is there any instance when these buses which I think are called coachettes are used from the North Western Station?

A. I have not seen them.

Q. Would you object to their use?

A. I couldn't tell you that unless I had seen the vehicle.

Q. You have not seen these vehicles?

A. I have not seen the coachettes.

Q. Did you approve the use of the bus in the Keeshin service?

300 A. The bus?

Q. Yes, the use of a bus.

A. The bus that we saw out there, I did not approve of.

Q. Did you approve of the VolksWagons that you saw out there?

A. I did not, because they were not air conditioned.

Q. Well, were you interested in the safety of passengers?

A. Well, that would be a factor. That would have been a factor, of course.

Q. But you did not approve the VolksWagon?

A. That is right.

Q. Did you not approve it because of its comfort features, as far as passengers' comfort and convenience was concerned?

A. I did not approve it because they could not be air conditioned.

Q. Did Mr. Keeshin give you assurance at the time that they could be air conditioned?

A. He assured us that they could be air conditioned, the VolksWagons, but it was not workable.

Q. Did you look at the baggage compartment in the VolksWagon to determine whether or not it was adequate to handle the number of passengers it could seat?

301 A. The vehicle could not be air conditioned. I wasn't interested in the rest of it.

Q. Did you notice whether or not the station wagon couldn't be air conditioned?

A. Oh, yes.

Q. So the fact of the air conditioning and the utilization of air conditioning during this summer period was very important to you as far as equipment was concerned?

A. Speaking for our company, I thought it was an important item.

302 Q. Did you ever mention this at any committee meeting at which other carriers were interviewed?

A. Well, that was the general concensus of the subcommittee.

Q. Did you ask Parmelee to provide air conditioning equipment?

A. Not that I can recall.

Q. Do you know what this total equipment that Keeshin proposed to use was estimated to cost?

A. No, I don't.

Q. Did you make any notations of what Keeshin's representatives cost would be?

A. He told us he was going to spend $500,000.

Q. And that would be on equipment?

A. He didn't specify whether it was on equipment or what it might be. He said he would put up $500,000.

Q. Do you know whether he did?"

By The Court: It is now 5:00 o'clock. We will recess until tomorrow morning at 10:00 o'clock, and please don't discuss this case with anyone, not even among yourselves, and let no one talk to you about it.

Have a pleasant evening.

We will recess until 10:15.

303 (Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Tuesday, April 26, 1960, at the hour of 10:15 o'clock a.m.)

304 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, April 26, 1960
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Francis J. McConnell,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

305 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

306 And thereupon the following further proceedings were had herein:—

By The Clerk: No. 56 C 323. Parmelee Transporation Company vs. John L. Keeshin, et al. The case on trial.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By The Court: Does anybody want to talk to the Court before we call the jury out?

By Mr. Thompson: Yes.

By The Court: All right.

By Mr. Thompson: We made our objection yesterday that this—

By The Court: That this deposition—

By Mr. Thompson: —that this witness, whose deposition is being read, is not a managing agent, and the witness is available, as I said to the Court yesterday, and he is in the court room, and unless he is a managing agent, of course he is not entitled to testify as an adverse witness. They can tell him as their own witness if they please.

This deposition that was taken, which was taken, of
307 course, three years ago, was really a discovery deposition, while under the Federal Rules, a deposition is for both purposes, which I think is bad practice, but anyway that is what the rule is, and so there are questions that are coming now that are leading questions, argumentative questions, and they are questions which I think would be clearly objectionable if the witness were on the stand.

I think the Court should be forewarned that we are proposing to object to them on those grounds, on the theory that this is not an adverse witness, and that he can't be cross examined.

308 A point that I want to mention, and we have authorities to that effect, is the rule laid down by the cases in that a managing agent is an agent invested by the corporation with general powers to exercise his judgment and discretion in dealing with corporate matters.

He does not act in an inferior capacity under close supervision or direction of superior authority, and we claim that that exactly defines Mr. Quackenbush's position, and that therefore he is not subject to being called under this rule.

Another thing I want to say to the Court at this stage is that we spent an hour yesterday listening to the reading of a deposition, and I think there was no evidence that

even came close to the issue that is the one on trial, as I understand the Court's ruling.

I appreciate the limits of just what the trial is are a little difficult for me to understand, and I assume my opponents are suffering from the same difficulty, but nevertheless examination of witnesses certainly ought to be directed to this question, and it seems to me Mr. McConnell should say to the Court that he has no evidence to support—

309 By the Court: May I interrupt, please?

By Mr. Thompson: Yes, sir.

By the Court: Mr. McConnell was very frank when he said twice before, and said it yesterday before the jury, "I do not propose to offer any evidence on public economic injury. I do not propose to offer any evidence about the increase in rates or the nature or the inferiority of service."

If I am misquoting, I don't mean to do that, Mr. McConnell. I am summarizing what you said.

He offered to stipulate to that effect and to have me make an immediate ruling upon the Court's rule on the separation of issues and to deny him an offer of conspiracy, and you refused to accept the offer, refused to stipulate.

I have no choice but to permit him to prove anything that may lead to the proof of public injury. I have no way of judging from the nature of the questions that have been asked so far as to what he is going to prove with them. They have all been preliminary.

Now if and when he discusses anything beyond the question, and I said I will entertain any motion, I will hear you on that point. But until then I do not propose to deny him the right to prove public injury in any

310 way that he wants to or can because his general offer was declined.

By Mr. Thompson: Yes, I declined to stipulate.

By the Court: That is right.

By Mr. Thompson: And I said this should take the regular course—

By the Court: That is right.

By Mr. Thompson: And I still take that position, but if he has no evidence on the issue that is here, he should say so, and I don't need to stipulate whether he does or doesn't. I think he has no proof of public injury, but that is for Mr. McConnell to say, whether he does or not, and I think that this matter of sitting here day after day listening to the kind of stuff we listened to yesterday afternoon doesn't even lead to the question of what we are confined to.

By the Court: I am not sure about that. The questions and the answers so far, as I say, have been preliminary.

By Mr. Thompson: They sure have.

By the Court: But they may lead to the question of rates. They may lead to the question of service. They have talked about the air conditioning. They have talked about the type of vehicle. Now they may 311 have some tendency to prove public injury. Until that point I am not going to bar their proceeding by saying they can't ask those preliminary questions.

When you make an objection to any question that touches upon anything beyond that question of public injury, I will make an immediate ruling.

By Mr. Thompson: Well, of course the purpose of separating issues is to shorten the trial.

By the Court: That is right, but not to deny him the right to prove public injury.

By Mr. Thompson: Certainly not, and if they have proof of public injury, we would be glad to acquiesce in their presenting it, but until they make some effort

to prove public injury by a good faith statement to the Court that that is what they are offering evidence for—now this deposition was not taken with any thought of the subject being confined to a single issue like this.

If we are going to spend the same amount of time going through all of this business, why we might just as well try this lawsuit, and that is the point I want. I either want this case tried or I want it confined to the issue.

By the Court: Your statement is very clear in my mind. I am also trying to try this lawsuit as I see
312 it, namely, to give them a chance to prove public injury and not to deny them that privilege.

All right, proceed.

Call the jury.

313 By Mr. Thompson: Does the Court adhere to its ruling that he may go ahead as though this fellow was a managing agent without showing that he is?

By the Court: If and when you show me by competent testimony that he is not what he answered in the questions and answer that he is, I will reconsider it. Until then, I will let it go in.

By Mr. Thompson: Your Honor, we don't have to prove the negative, that he is not a managing agent. They have to prove he is one.

By the Court: I think they have some proof in there to that effect.

By Mr. Keating: May the record note an objection by the New York Central to the use of a deposition when the person is here in the courtroom, in person.

By the Court: That has been argued yesterday, and I overruled it.

(Whereupon, in the presence and hearing of the jury the following proceedings were had:)

By the Court: Good morning, ladies and gentlemen. All right; proceed.

By Mr. McConnell: I will continue with the deposition of Mr. Quackenbush—

By Mr. Thompson: What page, Mr. McConnell, please?

314 By Mr. McConnell: Page 142, the second question from the bottom of the page. Would it be all right to read two or three questions again in order to get the continuity of this thing?

By the Court: Surely.

By Mr. McConnell: (Reading)

"CHARLES E. QUACKENBUSH, being first duly sworn by Notary Public Kay Arboit, testified as follows:

Direct Examination (continued).

Q. Did you make any notations of what Keeshin represented his costs would be?

A. He told us he was going to spend $500,000.

Q. And that would be on equipment?

A. He didn't specify whether it was on equipment or what it might be. He said he would put up $500,000.

Q. Do you know whether he did?

A. No, I do not.

Q. Did Parmelee likewise in March of 1955 offer to spend $500,000 on equipment to be installed within six months to a year?

A. Let me refresh my memory on the date.

Q. The March 15th proposal is included in the last exhibit that you are looking on, which is identified 315 as Exhibit 8.

A. Parmelee offered to spend $500,000 for new vehicles.

Q. Did you ask anybody other than Parmelee to figure this on the basis of air conditioning equipment?

A. No. The field was narrowed down to two people.

Q. Hadn't Willett made a proposal in February and then again in March?

A. He had.

Q. You didn't regard his proposal of any substance?

A. We felt that the man did not look sufficiently into the matter and, under the circumstances, we felt that Mr. Keeshin had and, of course, the Parmelee Company had been in business for over one hundred years and we felt that they ought to know.

Q. Had you discussed this problem with the Willett Company at all?

A. Personally? No.

Q. Isn't it true that various important executives of the Chicago and North Western had been very solicitous of the Willett Company and sought its interest in this proposal?

A. I believe—"

By Mr. Thompson: If the Court please, we ob-
316 ject to that.

By the Court: Objection will be sustained.

By Mr. McConnell: (Continuing reading)

"Q. Do you know what kind of equipment Mr. Willett proposed to use?"

By Mr. Thompson: I object to that.

By the Court: Objection will be sustained.

By Mr. McConnell: (Continuing reading)

"Q. If Willett had proposed to use buses, would that be one reason why you felt that he wasn't sufficiently informed?"

By Mr. Thompson: Same objection.

By the Court: Objections along the lines of what any other competitor or bidder did will be sustained.

By Mr. McConnell: Well, I offer to prove—shall I do this out of the presence of the jury?

By the Court: All right. Have you reached now an impasse?

By Mr. McConnell: I don't think so.

By the Court: All right. Proceed with your questions and answers. I will give you a chance to make
317 an offer of proof.

By Mr. McConnell: That is what I mean.

By the Court: All right; back to your cards.

(Thereupon, out of the presence and hearing of the jury the following proceedings were had:)

318 By Mr. Meserow: If the Court please, before Mr. McConnell makes his offer of proof, I would like to make an objection to his offer of proof of this witness Quackenbush because he is an adverse witness and the cases hold that it is within the discretion of the Court and it is not an abuse of discretion for the Court to deny counsel to make offer of proof of an adverse witness.

By the Court: I don't want to abuse my discretion or stretch my discretion. I am going to rule upon the evidence as I see it and as I get it. I am protecting the rights of all parties.

Let me ask, Judge Thompson and the other lawyers, step up here, please.

Do we have any basic agreement that we can enter into here that the contract of Parmelee had expired at the time the new contract was entered into?

By Mr. Thompson: Oh, sure.

By Mr. Meserow: They had no contract. There was an oral understanding.

By Mr. Thompson: I know, but that is a con-
319 tract. They had an oral agreement or continuing arrangement until June 30, 1955. I think that is—

By the Court: Do you say "No"?

By Mr. O'Connell: No, it hadn't expired. It ran until July, 1955. We are talking about things that happened in February and March.

By the Court: When was the new contract entered into?

By Mr. McConnell: When did the contract of Parmelee expire?

By Mr. Freeman: It did not expire. There were contracts from time to time or understandings and agreements that continued.

By the Court: When was the new contract entered into?

By Mr. McConnell: September 15, 1955.

By Mr. Meserow: It didn't go into effect until October 1st, 1955.

By the Court: When did the fiscal year or contract year end between the Parmelee and Terminal?

By Mr. Thompson: Well, it went from year to 320 year and always, as I understand it, was made from year to year, July 1 to June 30.

By Mr. Freeman: That isn't true. It did not go from year to year in any specific way such as Mr. Thompson indicates.

By the Court: Can we agree there was no written contract between Parmelee and the Terminal?

By Mr. Freeman: We can't agree to that because there was one written contract with the Nickel Plate Railroad entered into in 1941 and renewed several times, and the last renewal was in 1952. That is the last supplement.

By the Court: For how long was it renewed then?

By Mr. Freeman: In 1952 for an indeterminate period subject to termination by the superintendent of

service if Parmelee's service was unsatisfactory. That was the only basis of termination and the only term of the contract.

By the Court: Then we cannot agree on anything.

By Mr. Keating: The Nickel Plate isn't a party.

321 By Mr. Freeman: You asked me.

By the Court: I am merely talking for the record, the same as all of you folks are.

By Mr. Thompson: There are twenty-one railroads having passenger terminals.

By the Court: Is Nickel Plate a party defendant in this case?

By Mr. Thompson: No, and the only railroads that are party defendant are the six railroads that were on this negotiating committee which was appointed by the Terminal Lines to negotiate for them.

322 The C&EI, or I mean the Nickel Plate, which is a small railroad having very limited passenger service, did have some sort of a written agreement, which was, in general, the same.

By the Court: Is there any written contract between Parmelee and any of the defendant railroads before me?

By Mr. Thompson: No.

By Mr. Keating: There was a written notice of termination.

By Mr. McConnell: There is no written contract.

By Mr. Freeman: There was no written formal contract, but there were exchanges of correspondence which could be interpreted as written contracts between the terminal association or the terminal railroads individually and Parmelee, these defendants, too.

By the Court: All right; make your offer of proof.

By Mr. McConnell: The question that is objected to is:

"Q. Isn't it true that various important execu-
323 tives of the Chicago and North Western had been very solicitous of the Willett Company and sought its interest in this proposal?"

And I offer to prove by the deposition that the answer was as follows:

"I believe Mr. Feucht mentioned that we should get in touch with Willett to see if he would be interested, which we had already done."

The next question was:

"Do you know what kind of equipment Mr. Willett proposed to use?"

The answer was:

"No, I don't, offhand."

The next question was:

"If Willett had proposed to use buses, would that be one reason why you felt that he wasn't sufficiently informed?

"A. Well, I don't know whether that might have been the answer, but so far as I know, I don't know whether he made any such suggestions or not, unless I can refer to the files, if there is anything on it."

324 That is as far as we got. I offer the answers to the questions.

By the Court: The objection will be sustained to the admissibility of that offer of proof.

Let me again, for the record, in the absence of the jury, state my purpose in presiding over this hearing from now on, which is this:

Anything that goes or tends to directly or indirectly to establish or prove public injury is admissible and proper.

Anything that has a tendency to establish or prove a conspiracy, which includes negotiations with other people or the method of the procurement of this contract,

will be inadmissible and held at this time to be deferred until the jury determines the issue of public injury.

I can't make it any clearer than that, and I made it clear a week ago, and I am repeating it now.

You may use your judgment on that, or you may
325 require actual rulings upon each and every question.

I cannot stop you from doing that.

By Mr. McConnell: Your Honor, let me make my position perfectly clear. I don't want to be captious about this.

By the Court: Let me interrupt. You said yesterday, and I am with you a hundred percent, I don't want to do anything here that will stop you from making a good record. I want to help you.

By Mr. McConnell: I understand that, and I don't want you to think that I am just being captious about it, because I am trying to do what your Honor wants.

By the Court: I want to be as frank as I know how, and so do you. In the first place, I want to establish one principle here, the right of separation of trial.

Secondly, as an isolated issue, the propriety of establishing public injury in this case. Beyond that, you should make your record, and I want to permit you to make the record in every way possible, so that when
326 the Court of Appeals and the Supreme Court gets it, there will be no dilly-dallying and no evasion. This is it, and they have to pass on it.

By Mr. McConnell: Our trouble, your Honor, is quite basic. It has nothing to do with your Honor and it has nothing to do with me. It is just inherent in the lawsuit.

By the Court: I didn't get the last part of your statement.

By Mr. McConnell: I say it has nothing to do with your Honor and nothing to do with me. It is inherent

in this lawsuit. The question of conspiracy of what is and what is not a conspiracy, as your Honor knows, is made up usually of circumstantial and inferential evidence which goes all over the field of the activity of the different parties.

That is conspiracies usually are not held out in the open. You have to put them together by bits of evidence and here and there, and I want to be perfectly frank with your Honor, that some of the evidence
327 that is contained in the Quackenbush deposition, taken with other evidence of other witnesses, could be and would be, if I were permitted to try that issue, put together into an argument that it does prove conspiracy.

328 On the other hand, on the issue which your Honor has suggested here, there is much of this which taken apart and viewed separately, apart from any conspiratorial action, would tend to prove the very issue which your Honor has permitted us to submit to the jury, and the trouble, the inherent trouble with our position is that the two things overlap. There isn't any fine clear distinction between this evidence, because it could be offered on both issues.

If your Honor wants me to limit my offer, pursuant to your Honor's ruling, where you have told me that you will not receive it at all on a conspiracy issue, I can state to your Honor that in view of that ruling I am only offering it here on the basis of this separate issue.

What I would like to do and what my proposal was to Judge Thompson, and I don't know why he refused it as he talks about saving time, and I am interested in that, too, but as far as this lawsuit is concerned, I don't have to have it spelled out on a blackboard for me, as I
329 know I am on my way to the Court of Appeals, and I would like to get it there just as fast as I can.

What I would like to do, if he would waive the objection of having witnesses sitting up here or reading depositions, is to make a written offer of proof for this record and quit. Let him object to it, and your Honor could rule it out, and then direct the jury and go on from there, but I can't do that in the absence of a stipulation.

By the Court: The record shows that you are not being barred or limited in your proof of conspiracy or any other issue in this case. It is merely deferred until the public injury is established first.

You will have your right, if you establish that, to proceed with your proof of conspiracy. I don't have to spell it out, and we all understand each other, what proof of public injury means.

It means, was the public injured by this—exactly
330 what Judge Castle said in his opinion and what the other citation that I read to you said. I am limited to that.

When you pass that issue, we will go on with the next if it is sustained. If it isn't, I maintain and I have maintained that it is a bar to the recovery, and it ends the lawsuit.

By Mr. McConnell: Yes, but, your Honor, that is a right to say that, and I say this with all due deference, but if I can't offer the evidence of conspiracy, I certainly am not permitted to prove it, certainly not at this time at least.

By the Court: I am ruling that you cannot, and I will not permit any offer of conspiracy before a verdict is rendered on the question of public injury. You may make your offer of proof, and here is the record, and it is up to Judge Thompson and his associates to do whatever they please then, but you have a right to make your record, and I want you to make it.

By Mr. McConnell: I have only one way to make it under those circumstances, and that is to do just what
331 I am doing. There is no other way to do it, and it might take two weeks or three weeks.

I dont know how long it will take, but that is what I have to do. I have no other alternative.

By the Court: I have ruled on that, and the ruling stands.

By Mr. McConnell: All right.

All of these questions are going to be more or less—well, we have to have the jury back, I guess. I don't know any other way to do it.

By the Court: Do you want to say something, Judge Thompson?

By Mr. Thompson: No, except if it is going to take two or three weeks, let's try the lawsuit. It will only take two weeks to try the lawsuit.

By Mr. McConnell: It takes longer to make an offer of proof than it does to try a case.

By Mr. Thompson: I agree.

By Mr. Meserow: Your Honor,—

By the Court: Beyond that now, we are going
332 to try this on the one issue, and if it takes two weeks, time is not of the essence in the trial of a lawsuit.

By Mr. Meserow: Your Honor, I was going to say—

By the Court: It is not the only element.

By Mr. Meserow: —Your Honor, I was going to say that Mr. McConnell admits in open court that he is not going to present any proof of public injury. If he isn't, there is nothing to stop him, without any stipulation by the defendants, to proceed with his offer of proof.

333 By Mr. McConnell: I didn't say I wasn't going to offer—

By the Court: That is exactly what I said.

By Mr. Meserow: We don't have to stipulate.

By Mr. McConnell: I didn't say I wasn't going to offer evidence of public injury. I am offering evidence of public injury when I offer conspiracy proof. I have said that from the beginning of this lawsuit, and I will continue to say it until the Circuit Court of Appeals says—

By the Court: You are offering it under the presumption that it is going to establish public injury.

By Mr. McConnell: That is right.

By the Court: I am holding that it is a separate and distinct issue and has no bearing on public injury. It is the public injury issue that is before this jury now, and that is what we are trying.

You may make an offer of proof by conspiracy, what you intend to prove by it, and it is your opportunity.

334 By Mr. McConnell: The rules say how I have to do it, and I am bound by the rules. Your Honor is bound by them, and counsel are bound by them, and there is nothing I can do about it.

By the Court: I guess we need the jury back.

By Mr. Thompson: Of course, I submit he has no right to make any offer of proof on an issue that is not before the Court.

By the Court: That is where we are splitting hairs again. I am talking not about any particular lawyer, but when counsel says he is offering certain proof to establish public injury, I can't anticipate and rule him out. I have to give him the opportunity to make his record. I want him to make the record.

I can't say, "You can't make an offer of proof, because it is not on this issue." If he says it isn't, I will sustain the objection, but he says it is hitting toward public injury.

By Mr. McConnell: I say it is perfectly relevant 335 on the issue. I have said it and said it.

By Mr. Thompson: I know Mr. McConnell's posi-

tion, and I am not quarreling with it, but I say if this is a separate trial, so that we are trying this single injury, if it can be defined, and if the Court—and if that is the issue, then he has no right to offer proof on any other issue, and that is what is putting the defendants in a terrible situation in this case.

If they have a right to make their offer of proof of things outside the limited issue, which the Court is trying, then there is a record there made of their offers of proof, and when it comes to being reviewed, the reviewing court can read their offers of proof and say then that if this proof had been received and if it had been tied up with other proof that might have been relevant to the offers of proof, then there is a prima facie case made, and the defendants have had no opportunity whatever to meet any of that.

336 We can't offer a defense against an offer of proof, and we have a record here that is utterly impossible for us to defend if they can make offers of proof outside the issue which your Honor is trying.

If this were a simple case like somebody suing on a note, and the defense was that he had paid the note and that fraud was involved in a half dozen defenses, and the Court separated out the single defense that the note was paid and tried that issue, you would have a clean-cut plain issue that could be tried, and there would be no ifs or ands about it, because if the note were paid, of course he can't recover again, and all the elements of fraud and everything else would be out of the way.

This isn't the kind of a case where you can take a knife and slice it down into little pieces, as Mr. McConnell has said, and I appreciate there is a difficulty in knowing what to prove on this single issue, but the issue has been defined by the Court a good many times.

337 It seems rather clear to me what the Court has designated as the issue to be tried here. If that is so,

then the offers of proof must be limited to the issue that is here, and you can't offer proof of things that are outside this limited issue.

338 Otherwise, the defendants are in a hopeless situation and can't possibly meet it. We can't disprove an offer of proof.

By Mr. McConnell: I would like to answer that, your Honor.

By Mr. Owens: Mr. McConnell, I have not said anything on this issue yet.

By Mr. McConnell: You go right ahead and say anything you want.

By Mr. Owens: Your Honor, you have defined the issues. We are supposed to be proceeding according to the definition you have given. Mr. McConnell stands before your Honor and he says, "I am not accepting your definition, but my definition is that conspiracy is public injury," and he says, " Iwant to go ahead with this proof of conspiracy."

By the Court: I said I will not permit an offer of conspiracy, an offer of proof or any proof of it.

By Mr. Owens: He said in his last statement they are synonymous, conspiracy and public injury. Your Honor should at this time clearly limit him.

339 By the Court: If you will follow what I said a few minutes ago, I said I will not accept any offer of proof of conspiracy or any proof of conspiracy. He has to address himself to anything that has a tendency to prove public injury directly or indirectly, but not by conspiracy.

By Mr. McConnell: May I be heard on this?

By the Court: Certainly.

By Mr. McConnell: I think, and I may be wrong, but I don't think so, and I think your Honor wants the issue

decided by the Court of Appeals and not the question decided of whether or not it is an academic question.

What is going to happen if I don't make an offer of proof? I have taken a position before this Court, and I have taken it as clearly as any lawyer can take it. You can divide up the issue, any issue in the case under the rules of this court providing you are dividing up an issue which is severable and is a separate issue.

I have said this, and I have said it over and over again; that whether you are talking about Judge
340 Castle's opinion or any other opinion, that the public injury which is involved in the anti-trust laws was defined by the Congress, and one of the things they said was that public injury was a conspiracy.

I know your Honor is not going to permit that to go to the jury, but I don't want the upper court saying, when we get up there, "What are you talking about? You are talking about an academic issue, because you never offered any proof of conspiracy. You never offered it. You have nothing in the record here upon which you can go up."

Judge Thompson will be one of the foremost exponents of that rule. He will be up there saying, "This is academic. Mr. McConnell never was injured . . ."

By the Court: You can argue more effectively that you have tried to offer proof on a conspiracy, and the Court barred you.

By Mr. McConnell: Yes, but what is it? That is the purpose of the offer of proof, so the upper court can see whether you are talking nonsense or talking evidence.

341 I have a right, and I insist on it, of having a right in this court or any other court to make a record in this case.

I don't quarrel with your Honor if you want to make a ruling against me. I have been ruled against by courts for thirty-six years. It isn't any new experience to me, but I have a right, and your Honor has told me so, as a lawyer and representing a litigant in your court, to make my offer of proof in accordance with the rules.

By the Court: But not on conspiracy, only on the issue before the jury, and that is the ruling.

I am ruling now specifically that you cannot make an offer on conspiracy, that you can go as far as you want on the question of public injury, and that conspiracy has nothing to do with it.

By Mr. McConnell: You are defining that, and I am saying that your Honor is wrong, and I am trying to make a record here where I can attack that ruling in the upper court.

By the Court: The Court of Appeals will re-
342 verse me if I am wrong by saying, "The Judge should have given you a chance to make your offer of proof."

I am reserving it until after this issue is disposed of, both by offer of proof and by the proof itself.

By Mr. McConnell: May we have a five-minute recess?

By the Court: Yes, you may have ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

343 By the Court: Can you and I, Mr. McConnell, agree on an offer of proof towards public injury without shifting the jury in and out on every question?

By Mr. McConnell: I really don't think it makes any difference because you are going to direct a verdict against me anyway when we get through.

By the Court: I am talking about making a record. I want you to protect and preserve your record in every human way possible. I don't want to have the jury in and out every two minutes on every question and answer, not because of expediency, but because of my determination that I am right on the question of excluding from this jury every other issue except public injury.

I will give you leave to make an offer of proof on that public injury by a statement in the record.

By Mr. McConnell: Well, on the issue of public injury, as you have defined it —

By the Court: Wait. I will determine that question as to what constitutes proof of public injury. I don't want the record to show that I am barring you from making any offer of proof of public injury. I want to protect that right, and I want you to make every offer of
344 proof you want to make on that subject. I want to have the right to exclude from it anything that has no bearing on it.

By Mr. McConnell: You just told me I couldn't do it so I don't know what to say. I don't know what to do here.

By the Court: What is your decision?

By Mr. McConnell: My decision is there is nothing I can do. If your Honor tells me I can't do something, I am not going to get in contempt of this court just to be funny about it.

By the Court: Oh, no. I never dreamed of anything like that —

By Mr. McConnell: You tell me not to do anything. I am a lawyer, an officer of this court. You tell me I have to do something, I have got to do it. I don't know anything else to do.

By the Court: I am ruling —

By Mr. McConnell: I want to make an offer of proof, your Honor. Let me say this, I am not sure in my mind whether I have to make an offer of proof in view of your Honor's ruling, but I don't know. After all, we are in an absolutely brand new field here.

By the Court: What you don't know is what I am trying to clarify. I want the record to show that I am giving you every opportunity to make an offer of
345 proof on the issue before the jury. I understand that there is no clear line of demarcation on it. Make your offer an oral offer of proof along those lines. Then you will have your pie and you will eat it. You will be able to have in the record what you offer to prove and what I barred, excluded. Is that clear?

By Mr. McConnell: No, it isn't clear because the rules say I can't make an offer of proof that way. I have to make it by a witness.

By the Court: That is my ruling.

By Mr. Owens: We take exception to that also, to your Honor's ruling, because if he makes an oral offer of proof, he is going to put in all this material on conspiracy.

By the Court: That is my ruling on the record.

By Mr. McConnell: Well, I don't know whether your Honor has changed your previous ruling or not.

By the Court: I didn't. That is my ruling all the time. I am consistent in that ruling. I don't want any offer of proof and I will not permit any offer of proof of conspiracy. I am giving you every opportunity to make an offer of proof on public injury.

By Mr. McConnell: Your Honor, the basic problem that you and I face is that we don't agree on what
346 is proof of public injury.

By the Court: Yes, we do. We agree on that fully. We don't agree as to the principle of law on it, but we agree as to what the facts are.

By Mr. McConnell: Well, I don't agree as to what the facts are because, with all due deference to your Honor, and I am not saying your Honor can't rule on this — you can rule any way you want to rule, and I am assuming, and I certainly grant your right to make a ruling and your integrity in making it. There is no question about that in this record from my point of view.

My problem is, as a lawyer, in trying to meet that situation. My problem is this, that I don't want to be faced in the upper court with a view that you said in the lower court that on this issue, which the judge carved out, of public injury, that conspiracy was competent evidence to show public injury.

347 By the Court: I can't be any more specific in my ruling for the Court of Appeals or for this court or for counsel.

By Mr. McConnell: You have ruled it out all right.

By the Court: Yes, sir.

By Mr. McConnell: But the Court of Appeals could say, "What was it? Did you have any evidence of conspiracy? We are not going to decide these things in a vacuum up here."

By the Court: Regardless of how much you have, the Court says you can't introduce it at this time. I can't be more specific than that. You can do it when the jury brings in a verdict.

By Mr. McConnell: All right. Can we do this — This is just a suggestion which your Honor can do with as you please.

Outside the presence of the jury, so the jury doesn't even have to come back, can we make an oral statement to your Honor for the record of what we would prove if we were able to call these witnesses on the issue of public injury, but offering proof of conspiracy? Can we do that for the record so that nobody is prejudiced?

Now, Judge Thompson made a very peculiar state-
348 ment. He said that they would be prejudiced in the court above by prima facie proof of conspiracy.

No, they are not prejudiced above by that because, if your Honor is right, all of that evidence is irrelevant. It hasn't anything to do with the issue, if your Honor is right, and the upper court wouldn't consider it. But if your Honor is wrong, the next thing Judge Thompson is going to say is, "Well, he hasn't offered any proof of conspiracy. There isn't anything in this record to show that he ever had a lawsuit, and you are not dealing with cases up here as academic propositions. The man has to show that he is injured or offer to show it."

That is my problem.

By the Court: I also disagree with Judge Thompson's conclusion that if you do make an offer of proof on any phase of it, that he is estopped or denied any privilege or hampered in the protection of his clients' rights.

At first he said, and I agreed with him originally, that he could offer a counter offer of proof to protect his record or, even if he didn't, and I denied your offer of proof, I mean sustained the objection to the offer of proof, no Court of Appeals and no Supreme Court would deny the defendants a right to have their day in court.

349 By Mr. McConnell: Certainly.

By the Court: There is no theory of law that I can follow and—

By Mr. McConnell: Why don't we stop making—we all know what we want to do here. Why don't you let us get up before your Honor, let the jury out of this entirely? We will make an offer of proof to your Honor, and you are going to overrule it. Then submit the issue, and that is it.

By Mr. Meserow: On what? Public injury alone?

By Mr. Owens: I object if the oral offer of proof gets into these elements of conspiracy. I think he should confine it to that issue of public injury, just as he would if he were presenting it in the manner in which he is proceeding at this time. I think he has to conform to your Honor's ruling in that respect, and as soon as he departs from it, he is outside the issue as you have defined it.

By Mr. McConnell: No, I am offering it on the issue of public injury, and I am making my record on that.

By the Court: I will let you proceed with your offer of proof on public injury.

Proceed.

By Mr. McConnell: Mr. Freeman will make it.

By Mr. Thompson: I am certainly going to object
350 to any long recital of one of these horrendous tales that we have heard a half a dozen times in this lawsuit.

By the Court: That is right.

351 By Mr. Thompson: That is what we are going to have now, and I am against it, and the rules of the court are very definite on this subject.

By the Court: I just glanced through them myself, and I thought I was following them. What rule do you have in mind, Judge Thompson?

By Mr. Thompson: I am talking now about Rule 43 on the admissibility of proof.

By the Court: Yes, I checked it, too.

By Mr. Thompson: Well, as far as that is concerned, the law is as clear as daylight, it seems to me.

By the Court: The law is that it is discretionary with the court in the main, and there is one citation there that struck me peculiarly, where it holds that when the offer of proof is obviously — I forget the word they used, but meaning improper, and to accomplish a purpose which

has no place in the litigation, the Court ought not to permit it.

By Mr. Owens: I think that is —

By the Court: But when counsel addresses himself to the question of public injury and tells the Court, and I have confidence in all counsel, that he is trying to make an offer of proof to establish public injury, I do not propose to split hairs with him or to bar him from
352 making the offer to protect his record. That would be a denial of a fixed right that I don't want to violate.

By Mr. Owens: Your Honor, are you departing from your previous decision that he could not get into the question of conspiracy?

By the Court: Counsel, I have ruled on that. He can not go into it, and I will exclude it after he gets through making the offer.

By Mr. Freeman: We have a right to make a statement, and the cases are clear —

By the Court: You can make your offer on the record.

By Mr. Freeman: I will try to be as brief as possible —

By the Court: Make it as succinctly and as —

By Mr. Freeman: Factual.

By the Court: (Continuing) — factual as you can so we are not going to spend four or five weeks doing it. We could do it if we did it the other way. Everything that you have got to offer in your offer of proof is in the pleadings and briefs. I have read them, heard them, and in your depositions. So let's not go into that situation, but proceed with your offer of proof.

By Mr. Owens: I would like the record to show an objection on behalf of the defendant Hugh W. Cross to this proceeding.

353 By Mr. Meserow: I would like the record to show objection on behalf of my client —

By the Court: The record may show the objection of all defendants to this offer of proof. I am not deviating from my original ruling that I am not permitting any evidence or offer of proof to establish anything beyond the question of public injury, but I am respecting counsel's judgment, and he may address his proof to that issue.

By Mr. Keating: Further let the record show the objection of the New York Central to the offer of proof by counsel on the ground that there is no witness on the stand to which the offer of proof is directed, and actually the offer is directed to the Court of Appeals rather than the jury.

By Mr. Owens: I join in that.

By the Court: Any offer of proof is generally not addressed with any witness on the stand.

By Mr. Meserow: It must be according to Rule 43. There must be a witness on the stand, objection made, and then an offer of proof.

By the Court: There is one. The objections have been made. I have ruled on those. I have sustained the objections to some of the questions, and now we are taking a shortcut.

354 By Mr. Freeman: I am assuming, your Honor, that similar questions addressed to this witness and to other witnesses would be similarly objected to and ruled upon.

By the Court: And sustained.

By Mr. Freeman: I am making an offer of proof to that line of questions and that line of objections.

By the Court: I think I have been clear, and I am speaking frankly and freely. Anything that has to do with any alleged conspiracy, any dealings with any third persons, prior to the consummation of the contract, except

as pertain to public injury, are inadmissible and improper and the objection sustained and will be sustained.

355 By Mr. Freeman: When I finish my offer, they will make their objections.

By Mr. Meserow: We will make objections when you are making it, if you are going to deviate.

By Mr. Thompson: We are not going to wait until he finishes the offer. We are not going to sit still for a moment and have an offer of proof made that is not directed to a question pending before a witness who is on the stand because that is exactly what the rule says, and we will undertake to try this according to the rules.

By Mr. Freeman: I am trying to follow your instructions, and if they don't —

By Mr. McConnell: Wait a minute.

Judge Thompson made a statement there. The Court has refused to let me do exactly that, and I want the record to so show, and the reason we are doing this is because we can't do it the way you suggested. I agree with your statement 100 per cent, that that is the way to do it. We can't do it that way so we are doing it this way.

By Mr. Thompson: There is no use chattering about it.

By Mr. Freeman: We offer to prove through the witness Charles E. Quackenbush, who was general passenger agent of the Chicago and North Western Railroad in

356 1955 during the course of this issue before this Court, that he had been employed over forty years and was responsible for the determination of the adequacy of the Chicago transfer service on behalf of the North Western Railroad —

By Mr. Thompson: Your Honor, we object to that as a conclusion of the witness. The witness couldn't testify to that if he were on the witness stand, in the first place, and in the second place, we challenge that he will so testify.

He is now in the court room. We ask to have him put on the stand to answer that question.

By Mr. Freeman: I would like to go forward. Mr. Thompson is just trying to be disruptive.

By the Court: Proceed.

By Mr. Freeman: (Continuing) That he did attend the Chicago Terminal Lines' meetings and participated on various investigating committees; that the committees that were established by the Chicago Terminal Lines to investigate various Chicago transfer problems usually consisted of the railroads from each one of the six terminals involved in Chicago; namely, the North Western, covering the North Western terminal; the Pennsylvania, covering the Union Station; the Santa Fe, covering the Dearborn Station; Baltimore and Ohio, covering the
357 Grand Central Station; Illinois Central, covering the Central Station, and the New York Central, the La Salle Street Station.

In 1955, the Chicago North Western was the second largest transfer user with 17 per cent of the total.

Mr. Quackenbush would further testify that in 1955 and for years prior the Chicago North Western was satisfied with the Parmelee service; that the dealings—

By Mr. Thompson: I object to that as stating a conclusion of the witness which is immaterial, certainly to the issue before the Court, and we object to having any such offer made in the record.

By Mr. Freeman: (Continuing) That his dealings with Parmelee were straightforward and that problems that he presented were resolved promptly; that Parmelee had handled the station transfer service for over 100 years without a written contract, and to the witness' knowledge there was never a violation of any commitment undertaken by Parmelee.

358 By Mr. Thompson: I object to that again, your Honor, as a violation of the rules. The witness could

not so testify if he were on the witness stand, and he wouldn't so testify if he were there. We challenge the facts and we challenge the good faith of the statement, and we ask your Honor to rule on these objections.

By Mr. Freeman: He has so testified.

By the Court: The objection will be sustained.

By Mr. Keating: Your Honor, we can stand and make objections, but Mr. Freeman is going to keep on with the large manuscript he is reading into the record.

By the Court: I think if you will make a general objection to the entire reading of the statement—

By Mr. Thompson: We do make such an objection.

By the Court: And it will stand as an objection to everything he says, and I will rule at the conclusion. Everything that he says that he offers, and let the record show, the defendants object to it is incapable of proof, improper, and because the witness is not on the stand and wouldn't so testify, and because the witness is in court ready to take the stand and testify directly rather than from an offer of proof.

By Mr. Freeman: Your Honor, you are now at-
359 tacking the method.

By the Court: No; I am merely saying that the objection shows to your reading it on those bases, and then I will dispose of it when I get to it.

By Mr. Freeman: We would be glad—

By Mr. Meserow: The damage is done. The Court of Appeals will read his statement, which we have no opportunity to rebut. I think we should be able to make specific objections to these erroneous statements.

By Mr. Keating: They should be stricken.

By the Court: You can make specific objections.

By Mr. Freeman: You asked them to withold their objections.

By the Court: If they don't want to, they may do otherwise.

By Mr. Thompson: My objection is to making an offer of proof in this fashion at all, and I stand by that objection, and I am not objecting to these little tidbits as we go along. I do object to having it in the record in this fashion. We can't meet it.

It will be there. It can't be erased, and this is contrary to any rule that I ever heard of, of making an offer of proof, and I object to the form of making the offer
360 of proof, and I challenge the right to do it.

By Mr. Keating: Objection by the New York Central.

By Mr. Freeman: Your Honor, we should have an opportunity to make a fair statement of the excluded evidence. You have indicated what you intend to exclude, and you have indicated that I should have that opportunity.

By the Court: Proceed.

By Mr. Freeman: Mr. Quackenbush would further testify that all requests made on Parmelee for information were complied with.

By Mr. Thompson: We object to that, and ask that the witness who is in the courtroom be put on the stand to so testify. This is not even a good faith offer of proof. It isn't an offer of proof by any form. It is a speech.

By Mr. Freeman: It is the testimony, his deposition.

By Mr. Thompson: I want a ruling, if the Court please.

By the Court: Sustained.

By Mr. Freeman: That Mr. Quackenbush was appointed as one of a number of six railroads on a committee on January 29, 1954, organized primarily for the purpose of determining whether the cost to the railroads of the transfer service could be reduced.

361 A statement was prepared by that committee and transmitted to prospective bidders. Mr. Quackenbush

would identify a document that we have procured from the Chicago Terminal files and coded as A-669 to A-672, as a statement prepared on or about July 21, 1954, and circulated to prospective bidders.

In this statement the committee states:

> "That we would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company and they feel that the services of each has contributed to the success of the other. Notwithstanding, the economic conditions are such that the railroads must not undertake to pay a greater free for the services performed than is necessary."

362 This statement prepared by the committee, Mr. Quackenbush would so testify, was submitted to the various people who were solicited for a bid.

Mr. Quackenbush would further testify that any increase in the cost to the North Western Railroad, either in the amount of the transfer coupon or in the cost of performing collateral work by the railroad for the transfer company would be of vital concern to his railroad; that on May 19 the committee had a meeting in order to consider the respective bids of both Mr. Keeshin and Mr. — and the Parmelee company, that Mr. Brennan who was general passenger manager of the Chicago North Western Railroad for the first time in his history with the railroad attended this committee meeting, that he attended it because Mr. Quackenbush had been called by Mr. Bone of the New York Central on or about April 28 and requested to have his top passenger executives present at the next committee meeting, because there had been intervention with certain railroad presidents by Mr. Cross, and it was because of that request —

By Mr. Thompson: Objection.

By Mr. Freeman: —that Quackenbush invited Brennan to this meeting.

By Mr. Thompson: Objection.

363 By Mr. Keating: There has been an objection, Mr. Freeman.

By Mr. Freeman: I wanted to finish my sentence.

By the Court: The objection is sustained.

By Mr. Owens: And I would request your Honor to direct Mr. Freeman not to read material of that type into the record.

By the Court: Yes; anything of that nature directly on the conspiracy is ordered stricken and will not be received by this Court, and I ask counsel not to address himself to that conspiracy.

By Mr. Freeman: Your Honor, that is part of our proof of public injury, and we propose to make such an offer of proof, and that is the only reason I am standing here.

By the Court: Proceed.

By Mr. Freeman: That Mr. Quackenbush was interviewed in the morning by the committee, that Mr. Markin of Parmelee was interviewed in the afternoon, their respective proposals analyzed by the committee, and at the conclusion of the meeting Mr. Quackenbush would testify it was decided to have another meeting on June 3rd, so the committee members could report back to their executives in the railroads for instructions; that as a mat-

364 ter of normal routine and regular practice, Mr. Quackenbush, on behalf of the North Western, prepared memoranda of occurrences at these committee meeting for his superior, Mr. Brennan, that his was the normal practice with respect to the other committee members. That is was necessary to have these memoranda prepared, because the railroad officials are constantly in mo-

tion; that a memorandum was prepared after the May 19th meeting by Mr. Quackenbush in consultation with his assistant, Mr. Stewart, and with his superior, Mr. Brennan.

365 That this memorandum consisted of four pages and was coded as North Western 70 to 74, and is dated May 23rd, 1955, signed by Mr. J. R. Brennan and addressed to the Vice President of Traffic, Mr. R. O. Small.

By Mr. Thompson: We object to any reference to any such thing. It has nothing to do with whether the public was injured or not injured, and this thing is still going on.

By the Court: The objection will be sustained.

By Mr. Thompson: The Court has heard this horrendous speech a half dozen times. This is not an offer of proof, and it is getting into the record, and there is no way I know of —

By the Court: It has been in the record for a long time. It is in the record now. It is in the pleadings, and the Court sustains it and excludes it.

By Mr. Thompson: I move that all that he has read so far be excluded as an improper way to make an offer of proof, and that it be stricken out of the record.

By the Court: I will reserve my ruling. I sustain the objection,, however, and strike it from the record.

By Mr. Freeman: That I would offer through Mr.
366 Quackenbush as Parmelee Exhibit No. 1, this memorandum of July 21, 1954, and the covering transmittal letter of July 22, 1954.

By Mr. Owens: That is objected to, the admissibility of those documents.

By the Court: Objection sustained.

By Mr. Freeman: That I would offer through Mr. Quackenbush, who would identify this memorandum on May 23, 1955, as having been prepared by him, as Parmelee Exhibit No. 2.

By Mr. Owens: I object to this proceeding, your Honor. He is still directing his testimony to this statement, to this document which has been objected to. I think your Honor should direct him not to proceed with it.

By Mr. Freeman: I think your Honor has made —

By Mr. Owens: Your Honor, he is making a farce to this proceeding.

By the Court: The objection is sustained. Proceed.

By Mr. Freeeman: That by this memorandum Mr. Quackenbush made a comparison of the proposal of Keeshin and the proposal of the Parmelee Company and pointed out that Keeshin rates could go to $1.25 in the fourth year and $1.27 in the fifth year of service, and
367 that there was no guarantee by Keeshin of the amount of the rates for service in the fourth and fifth years. In contrast, Mr. Quackenbush pointed out that the Parmelee proposed a maximum ceiling for each year of the six and a half years of service, with the fourth year being lower than Keeshin's at $1.24, and the fifth and sixth years being lower than Keeshin at $1.25.

Mr. Quackenbush further pointed out that the Keeshin proposal estimated that they would require $500,000 to furnish all facilities and equipment, and Parmelee had likewise estimated that it would require $500,000 to purchase new equipment and proposed to do so over a period of six months to one year.

The memorandum was prepared, and Mr. Quackenbush recommended that Parmelee, that the railroads vote for Parmelee and continue Parmelee on May 23rd, 1955.

Mr. Quackenbush would further testify that he was furnished a memorandum by Mr. Brennan of a telephone conversation between Hugh Cross and —

By Mr. Meserow: Objection.

By Mr. Freeman: I have not finished my sentence.

By the Court: The objection is sustained. Between whom?

368 By Mr. Freeman: By Mr. Hugh Cross of the Interstate Commerce Commission and the president of the railroad, Mr. Paul Feucht.

By the Court: Sustained. It is improper and hearsay, and it will be sustained, and you can't refer to it. It has to be proper evidence.

By Mr. Freeman: All right; I will put it in through Mr. Feucht.

Further, that Mr. Quackenbush on June 2nd went out to take a look at the Keeshin equipment, that he would testify that he did not approve of the bus or the Volkswagon, that in addition he had opposition to the Volkswagon because it couldn't be air conditioned and because it only had exits on one side and therefore created a distinct hazard to the safety of passengers; that Mr. Quackenbush opposed the use of the Volkswagons on the surface, but Mr. Keeshin nevertheless put them into service on October 1st and then abandoned them in January, 1956.

That the station wagons he inspected he felt could do the job, but they had several drawbacks; that he was worried about the height of the vehicle in so far as head room was concerned, and Mr. Quackenbush pointed out that the Parmelee vehicle had more head room, that
369 he was also concerned about the fact that the station wagons had to be open in the back to load baggage which thus exposed the passengers to the elements.

By Mr. Owens: I object. All of this is a preliminary statement regarding a contract, which was eventually gone into.

By the Court: That may go towards public injury; I am not sure.

By Mr. Owens: Your Honor, they eventually entered into a contract. All of these preliminary negotiations would be merged in that contract.

By the Court: Not in anti-trust law.

By Mr. Thompson: Now, if the Court please, my objection is that Mr. Quackenbush is in the court room.

By the Court: I sustained that objection.

By Mr. Thompson: And the statements made are not true, and he will not so testify.

By the Court: I sustained that objection.

By Mr. Freeman: Further, Mr. Quackenbush would testify, if he were called to the stand, and his deposition also supports the fact, that the Parmelee vehicles were especially built with baggage compartments separated from the passengers.

Mr. Quackenbush did not know the position that the Chicago North Western Railroad would take on the 370 evening of June 2nd, when he was called by Smart of the Illinois Central and asked, but that on his way over the committee meeting and possibly ten minutes before the meeting, he was told by Mr. Brennan—

By Mr. Owens: Objection on behalf of the defendant Cross.

By Mr. Freeman: That he was told on behalf of Brennan, his superior, that they were going to vote for Keeshin, that he had had no discussion with Mr. Brennan during the period of May 23rd, the time of his memorandum, and June 3rd.

By the Court: Objection sustained, and it may be stricken.

By Mr. Thompson: I would move to strike all of this.

By the Court: It may be stricken.

By Mr. Freeman: In the June 3rd committee meeting, the committee voted unanimously for Keeshin, with Mr. Whittington of the B&O making the motion, and then they called Keeshin in to clear up the certain issues.

One issue discussed with Keeshin was the rate that he would charge for the fourth and the fifth year, and they sought to get from Mr. Keeshin a maximum ceiling, but he refused to provide them with a maximum ceiling, and so in consequence, Mr. Quackenbush pointed out that Keeshin's rate could go and actually did go higher than the Parmelee proposal.

371 Mr. Quackenbush further says at that time it was essential in order to assure good service, that the contract with Keeshin have a termination clause, that such a termination clause was proposed by the railroads in their draft of contract, that it was eliminated upon Mr. Keeshin's urging, that at this June 3rd meeting, Mr. Quackenbush would testify that it was not decided as to how the baggage would be handled for the passengers, either the baggage accompanying the passengers or the baggage that was checked through and went separately from the passengers.

That the matter of baggage handling was of primary consequence to the conduct of the Chicago Transfer Service, and yet, the committee had not, on June 3rd, determined whether or not the accompanying baggage was to be handled either in the back of the station wagon or on top of the station wagon and had not determined whether the checked-through baggage was to be loaded or unloaded on the railroad docks by railroad employees or by company employees, by Keeshin's company employees.

That the matter of loading and unloading baggage was of substantial cost to the railroads and resulted in an 372 acrimonious dispute between the Chicago and North Western and the Keeshin Company when the services were commenced.

By Mr. Thompson: I object to that. No part of this can be sustained. Mr. Quackenbush will testify to no part of it, and we challenge the good faith of the offer.

By The Court: Objection sustained.

By Mr. Thompson: We object to—

By Mr. Freeman: He sustained it already. You are talking after the ruling, Mr. Thompson.

By Mr. Thompson: If you don't quit running off at the mouth, we will give you some remedy for diarrhea pretty soon.

By Mr. McConnell: I object to those statements, Counsel.

By The Court: Let's not get into personalities.

By Mr. Thompson: My next motion is to strike from the record all that has been read so far.

By The Court: The objection is sustained, and it may be stricken. Proceed.

By Mr. Freeman: Your Honor, I do want to take personal offense to Mr. Thompson's remarks, both to me and the insult to this Court.

By The Court: I ask all counsel to refrain from any personalities. This is a very serious and important
373 lawsuit, and we are trying to hold it in the highest tradition of the court.

By Mr. Freeman: I will be glad to stop at any end of a sentence.

By The Court: Proceed, please.

By Mr. Freeman: I would offer to prove from Mr. Paul E. Feucht, president of the Chicago and North Western Railroad in 1955, that he was interested in the transfer negotiations in 1955 in order to secure a cheaper transfer rate, and that was his only interest.

By Mr. Thompson: If the Court please—

By Mr. Freeman: That he was—

By Mr. Thompson: Just a minute. You are at your period now. I waited until you got to your period.

If the Court please, I object to any offer of proof as to what Mr. Feucht would testify to.

374 He is in the court room. He was here to testify. He has come from Washington at their request to testify, and if they want to hear his testimony or if the Court wants to hear it, let them put him on the stand, and swear him and take his testimony.

By Mr. Freeman: We will put him on. If that is the way they want it, we will put him on. He is here, and we will put him on before the jury.

By The Court: Very well; bring out the jury.

Wait a minute. Before we do that, is yours along the same line of testimony?

By Mr. Freeman: Yes, more so. Mr. Feucht is a very important witness in this entire problem.

By Th Court: Is he going to testify directly?

By Mr. Freeman: He is going to testify directly that Mr. Cross told him that he was very much interested in seeing that Keeshin get the contract and told him a lot of other things.

By The Court: That will be absolutely inadmissible, improper, irrelevant to this issue before me now. I think you had better make your offer of proof, and I will sustain the objection.

By Mr. Freeman: All right. I assume there is an objection running to this entire line?

By The Court: There is one made.

375 By Mr. Thompson: There is an objection running to anything when Mr. Feucht isn't on the stand and questions put to him.

By Mr. Freeman: I am abiding by the Court's suggestion that I proceed with my offer of proof rather than call Mr. Feucht.

By Mr. McConnell: Wait a minute. The objection was made not to the content, what the offer would be. The objection was made that Mr. Feucht was here in the court room, and I want the record to be perfectly clear that we accede to that position.

By The Court: I will sustain the objection. I am taking you at your word that he is going to offer testimony about conversations with Mr. Cross, and I will sustain the objection to it and not permit him to testify to conspiracy, and you may make your offer of proof.

By Mr. McConnell: We offered to call him, and your Honor doesn't permit it.

By The Court: No. You can call him and put him on the stand if you insist upon it. I am not going to deny you the right. I am going to sustain the objection to any such testimony, and I will not permit any element of conspiracy.

By Mr. McConnell: Call him.

By The Court: Bring out the jury.

376 (And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. McConnell: We don't need to call the jury. We are making this offer of proof outside.

By The Court: Wait a minute. You are making your record. You want to call a witness, and you say the Court is denying you the right, and I am not denying the right. I will rule before the jury. Both sides are technical.

By Mr. Freeman: We are not technical.

By The Court: I am not saying it critically. I am saying it with all due propriety, and I have to watch the record.

By Mr. McConnell: Well, I don't see the point of bringing the jury back, because we are making an offer of proof, and that is all. That is all we are doing, your Honor, is making an offer of proof which we want to make outside the presence of the jury. That was understood at the beginning that all offers of proof—

By The Court: Basically, you have a right to call a witness before the jury on the issue that I have circumvented.

377 PAUL E. FEUCHT, called as a witness herein, for adverse examination by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name?

A. Paul E. Feucht.

Q. And your address, sir?

A. My present address?

Q. Your present address, yes.

A. 4226 Columbia Pike, Arlington, Virginia.

Q. And your present occupation?

A. Deputy Assistant secretary of the Army, Logistics.

378 Q. What was your position in 1955?

A. President of the Chicago and North Western Railway Company.

Q. How long had you held that position?

A. Since January, 1953.

Q. During 1955 had you any interest in the negotiations that were then being conducted by a committee of the Chicago Terminal Lines for the Chicago transfer situation?

A. By interest you mean did I participate in any of the negotiations?

Q. No. I mean were there any reports made to you, and did you discuss it with your subordinates?

A. Well, reports were made to me from time to time orally, and whenever I had staff meetings. I had staff meetings about once a week, and then in between certain people would come in and talk to me about them.

Q. Mr. Feucht, you are a defendant in this case, are you not?

A. I am.

By Mr. Freeman: And we do examine him, your Honor, as an adverse witness.

379 By The Court: All right; you have a right.

By Mr. Freeman:

Q. Is it true you were primarily interested in the transfer negotiations in 1955, to secure a cheaper transfer rate, if possible?

By Mr. Thompson: If the Court please, that is immaterial to any issue in this case.

By The Court: Overruled; he may answer.

By The Witness:

A. I was.

By Mr. Freeman:

Q. Mr. Feucht, were you a former director of the Willett Motor Truck Line?

By Mr. Thompson: We object as immaterial.

By The Court: Objection sustained.

By Mr. Freeman: I will make an offer of proof, but let me go through with those questions I can ask this witness now as that might save time.

By The Court: All right.

By Mr. Freeman:

Q. Mr. Feucht, were you called by Mr. Cross on or about May 13, long distance?

380 By Mr. Thompson: Objection.

By The Court: The objection to that will be sustained and the witness need not answer.

By Mr. Freeman:

Q. Mr. Feucht, did Mr. Cross call you and tell you he was very much interested in seeing that Keeshin got the transfer contract?

By Mr. Thompson: Objection.

By The Court: Sustained, and he need not answer.

By Mr. Freeman:

Q. Mr. Feucht, did you receive a telegram from Mr. Cross on May 25 advising you that he was coming to Chicago and wanted to see you?

By Mr. Thompson: Objection.

By The Court: Same ruling, in any dealing with Mr. Cross by this witness except as pertaining to the public injury on the question of rates and service.

By Mr. Freeman:

Q. Mr. Feucht, I want to show you a memorandum dated May 13, 1955, which bears the initials P.E.F., and ask you whether or not that was prepared by you.

381 A. It was.

Q. I want to show you a telegram dated May 25, 1955, addressed to you, and ask you whether you received this telegram, and whether it came to your attention.

A. I received the telegram, and it came to my attention.

By Mr. Freeman: May I mark as Plaintiff's Exhibit No. 3, this memorandum of May 13, and as Plaintiff's Exhibit No. 4 for identification, this telegram?

By The Court: They may be so marked.

(Thereupon said documents were marked Plaintiff's Exhibits 3 and 4 for identification.)

By Mr. Freeman:

Q. Mr. Feucht, do you recall receiving a memorandum from Mr. R. O. Small addressed to you on May 27, 1955, with respect to the Chicago Transfer situation, and is that the memorandum you received?

A. This doesn't have the statement attached.

382 Q. You mean these two additional papers?

A. Yes, this is the one.

Q. Then did you receive, Mr. Feucht, from Mr. Small, this three-page memorandum dated May 27, 1955?

A. I did.

Q. And did Mr. Small say to you that it was the view of the passenger people—

By Mr. Thompson: Now we object to that. You know better than that. We object to his reading from a document not yet offered in evidence.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibits 3 and 4, and I will ask to have this marked as Plaintiff's Exhibit 5 and I offer it in evidence.

(Thereupon said document was marked Plaintiff's Exhibit No. 5 for identification.)

By The Court: All right.

By Mr. Freeman: I have offered in evidence Plaintiff's Exhibits 3, 4 and 5, identified by this witness.

By The Court: I have Exhibit 5 before me. I haven't got the others.

383 By Mr. Freeman: Excuse me, your Honor.

By The Court: All right. First, on the question of Exhibit 5, which is the letter, I see no objection to that, but I will hear you if you have any.

By Mr. Thompson: We object to this document on behalf of all of the railroads other than North Western, and on behalf of all of the individual defendants other than Mr. Feucht—

By The Court: That is a valid objection.

By Mr. Thompson: That they are in no wise identified with this, had no knowledge of it before or after.

By The Court: That is a valid objection. It will be received only as to the writer.

On these two, I will sustain the objection and exclude them because they pertain to what I have already ruled on.

By Mr. Thompson: The ones to which your Honor is now referring are Plaintiff's Exhibits 3 and 4?

By The Court: Those are Exhibits 3 and 4. Call them by name. It is the Hugh Cross telegram and Cross references, and they are excluded.

384 (The said document heretofore marked Plaintiff's Exhibit 5 for identification was received in evidence.)

By Mr. Freeman: I will say with respect to Exhibit 5 that we do charge a conpiracy, and the statements made by one of the conspirators in the course of a conspiracy is admissible.

By The Court: I have definitely ruled that conspiracy has no place here, and it is not going in.

By Mr. Freeman: I just want to make my record.

By The Court: I am merely defining the issue again.

By Mr. McConnell: Do you want to identify them for the record?

By Mr. Freeman: Yes, I do. I now want to identify them—

By The Court: They have been marked.

By Mr. Freeman: Exhibit 3 as your Honor indicated, should be identified—

By Mr. Thompson: It is identified. It speaks for itself.

By Mr. Owens: Objection.

By Mr. Meserow: Objection.

By The Court: Exhibits 3 and 4 are excluded.

385 By Mr. Thompson: It speaks for itself. I object to your reading any part of it.

By The Court: The objection is sustained. I only admitted Exhibit 5.

By Mr. Freeman: We will make an offer of proof of all of this, but I just want to get through with this witness so the jury doesn't have to go in and out.

By The Court: That is all right.

By Mr. Freeman:

Q. Mr. Feucht, you did testify that you received this document that has been marked Plaintiff's Exhibit 5?

A. Which one is that now?

Q. The memorandum of May 27.

A. I did.

Q. Is it true that on May 27, you were advised by your vice-president in charge of traffic that "It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity,

386 and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."?

By Mr. Thompson: We object—

Q. Was that the advice you received?

By Mr. Thompson: We object to the hearsay character.

By The Court: Objection sustained as to all the others except the one who wrote the letter.

By Mr. Freeman: I am only asking if he was so advised.

By The Court: He said he received it.

By Mr. Freeman:

Q. Were you so advised?

By Mr. Thompson: The document speaks for itself.

By Mr. Freeman: May I get an answer?

By The Court: He may answer.

By The Witness: Answer to what now?

By The Court: Were you so advised.

By The Witness: Advised as to what?

By The Court: The last paragraph in that exhibit. Let him read it.

387 By Mr. Thompson: The question should be did he read the exhibit, and not whether he was advised about anything.

By Mr. McConnell: Oh, I object to your advice and counsel here. Let our counsel proceed with this.

By the Witness:

A. I received this.

By Mr. Freeman:

Q. And were you so advised by Mr. Small?

A. Separately from this exhibit?

Q. No, by this exhibit.

By the Court: Objection sustained. He received it.

By Mr. Freeman:

Q. Was it the intent of these memoranda that were transmitted to you to advise you of the position taken by your passenger people?

By the Court: Objection sustained.

By Mr. Freeman: There was no objection.

By the Court: Whose intent? Oh, yes, they rose.

By Mr. Freeman: Did they rise?

By the Court: Oh, yes.

388 I want to explain to the jury there is nothing mysterious about what we are discussing here. The Court has limited the issue to one question, whether or not there is public injury, and all I am trying to do here, and I don't want you to be mystified by it or counsel's objections. Each one is protecting their respective interest properly, and there is no objection to that.

But I want the jury to know what is behind it. I am trying to exclude from the jury anything except that one issue. Is that clear? So please don't be confused about it.

By Mr. McConnell: As long as you are telling the jury that, I think you might also tell them that you have ruled that on that particular issue of public injury, you are not going to permit any evidence of conspiracy.

By the Court: I am not going to permit any of the conspiracy on this immediate issue.

389 By Mr. McConnell: That is what I am talking about, on this issue.

By the Court: I am going to reserve it until it is disposed of. The record so shows, and I have said it ten times. I think I have told the jury that.

By Mr. Freeman: I would just like to complete my questions to Mr. Feucht. I know that they will be subject to objections and your Honor's rulings.

By Mr. Freeman:

Q. Mr. Feucht, did you advise Mr. Morehouse that Mr. Cross was at the Union League Club during the period from June 1st to June 3rd of 1955?

By Mr. Thompson: I object to that.

By Mr. Meserow: Objection.

By the Court: I sustain the objection.

By Mr. Freeman:

Q. Did Mr. Morehouse go up to see Mr. Cross pursuant to your suggestions?

By the Court: Objection sustained.

By Mr. Freeman:

Q. Who was Mr. Nye Morehouse with the Chicago and North Western Railway, Mr. Feucht?

390 Maybe I can get that question answered. Can you answer that?

A. At that particular time Mr. Nye Morehouse was, as I recall, retired as vice president and general counsel, and he was on a special job dealing with rates between the Eastern and Western railroads.

Q. Wasn't he involved with rates generally, with several of the rate cases then pending before the Interstate Commerce Commission?

By Mr. Thompson: I object.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Was Mr. Morehouse engaged with respect to the determination of the class rates in the mountain territory?

By Mr. Meserow: Objection.

By Mr. Thompson: Object to the question.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Feucht, in 1955 were there more matters which the Chicago North Western Railroad had pending before the Interstate Commerce Commission?

By Mr. Thompson: I object as immaterial. The 391 Court has already ruled on that before trial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Feucht, did Mr. Morehouse report back to you on his conference with Mr. Cross on June 2nd?

By Mr. Thompson: I object to that, assuming that there was a conference.

By Mr. Owens: Objection on behalf of Mr. Cross.

By the Court: I sustain the objections.

By Mr. Freeman:

Q. Do you know whether or not the Willett Company withdrew from the negotiations for the Chicago transfer contract?

By Mr. Thompson: I object to that as immaterial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you know whether or not, Mr. Feucht, the Willett Company was rejected as a proposed bidder because their rate was identical with the rate that Parmelee was then charging?

By Mr. Meserow: Objection.

By the Court: Objection sustained.

392 By Mr. Freeman:

Q. Do you know what kind of company the Willett Company is with respect to its experience in the field of passenger traffic?

By the Court: Objection sustained. I am ruling and have ruled and will continue to rule that the Willett connection with this case has nothing to do with it and is not admissible.

By Mr. Freeman:

Q. Mr. Feucht, did you instruct your passenger people to vote for Keeshin on the evening of June 2nd?

A. I did not.

Q. What was the discussion that occurred on the evening of June 2nd with respect to the Chicago Transfer Service in which you participated?

By Mr. Thompson: I object to that.

By Mr. Owens: Objection.

By Mr. Thompson: It is hearsay as to everybody except Mr. Feucht and somebody else in the first place, and it is also immaterial.

By the Court: He may state who was present, where it was.

393 By Mr. Freeman: All right.

By Mr. Freeman:

Q. Let me ask you, then, did you have a meeting with Mr. Brennan late in the afternoon of June 2nd in your office?

A. I am not sure whether it was on June 2nd or the day following, but regardless of what day it was, I did have a meeting with Mr. Brennan in my office, late on Sunday in that particular area.

Q. Was this meeting prior to the time of the committee meeting at which the North Western's vote was cast for the Transfer Service?

A. That I don't recall. I don't recall.

Q. Was there anyone else present at this meeting with you, Mr. Feucht?

A. That I don't recall.

Q. Can you tell us what happened at this meeting?

By Mr. Thompson: We object to that; hearsay as to everybody except Mr. Feucht and is immaterial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Did you review the memorandum with Mr. Brennan that had been prepared by Mr. Small and identified 394 here as Plaintiff's Exhibit 5?

A. I believe I did, but I am not positive. In the normal course of business, I would probably review it.

Q. Did you review that memorandum in detail with Mr. Brennan that late evening?

A. Not that I recall.

Q. Didn't you previously testify under oath in response to a deposition—did you previously testify in a deposition in this case?

A. I did.

Q. Didn't you previously testify as follows:

"Q. Had you reviewed that memorandum before you spoke to Mr. Brennan on June 2nd?

"A. I probably did. In fact, I would say that I went over it in detail with him."

Now, is that correct?

A. I practically said the same thing here.

Q. What do you say now, that you did review this memorandum in detail with Mr. Brennan?

A. I said I assumed that I probably did, but I don't recall definitely.

Q. Did you recall better then, Mr. Feucht?

395 A. Not necessarily.

Q. Did you decide with Mr. Brennan at that meeting to vote for Keeshin?

A. Did I decide?

Q. With Mr. Brennan at that meeting?

A. I did not. Mr. Brennan made the decision.

Q. On what basis did he decide for Keeshin?

By Mr. Thompson: I object to that as calling for mental operations.

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you recall whether or not Mr. Brennan advised you that the Keeshin proposed rate was the lower rate of the two?

By Mr. Thompson: We object to that as immaterial.

By the Court: He may answer if he so recalls.

By the Witness:

A. As I recall it, he did tell me that the rate was lower.

By Mr. Freeman:

Q. And was that the basis upon which the decision
396 was made?

By Mr. Thompson: Objection.

By the Court: Objection sustained.

By Mr. Freeman: All of this I will make as a matter of offer of proof.

By the Court: I presume so.

By Mr. Freeman:

Q. Mr. Feucht, was the Chicago North Western Railroad at that time interested in what was generally known as the coal roll-back case involving an increase of 35 cents per ton of coal going into the Wisconsin and Michigan area from—

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Did the North Western Railroad handle approximately seven million tons of coal a year into the Wisconsin and Michigan areas?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Thompson: This has all been ruled before trial by Judge Sullivan and by yourself, and I don't want the questions even asked.

397 By the Court: The objection is sustained.

By Mr. Thompson: The Court has ruled that it is improper.

By the Court: All I can do is sustain an objection, Judge Thompson.

By Mr. Owens: You can instruct him, your Honor, not to get into the province of these things which have already

been ruled on, and hold him in contempt if he persists in doing so.

398 By Mr. Freeman: I would like to make an offer of proof.

By the Court: Will you discharge the jury then?

By Mr. Thompson: Are you through with the witness?

By Mr. Freeman: You may step down.

By Mr. Thompson: Is he excused?

By Mr. Freeman: Yes, Mr. Feucht, I am through with you if Mr. Thompson has nothing further.

Actually, your Honor, I have not been able to interrogate this witness, and my offer of proof will cover the area of questions that have been precluded.

By the Court: You and I understand each other very well.

By Mr. Freeman: We understand.

By Mr. Thompson: We want Mr. Feucht to remain, of course, while the offer is being made because we may want to challenge it. Otherwise, you may step down. You don't have to sit there, if that is agreeable to the Court.

(Witness excused.)

399 By the Court: All right.

I will let you ladies and gentlemen go to lunch. I hope you enjoy it. Don't discuss the case with anyone, and return at 2:00 o'clock. We are going to discuss some legal questions.

(Whereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Go ahead.

By Mr. Freeman: I would offer to prove through Mr. Paul E. Feucht, president of the North Western Railroad, that in 1955 he was the president and he was very much—

By Mr. Owens: Objection.

By Mr. Meserow: Just a minute.

By Mr. Owens: The jurors haven't left.

By Mr. Freeman: I would like to abide by the Judge's instructions.

By the Court: I told him to go ahead, gentlemen. Don't jump on him.

By Mr. Thompson: We just thought he would like to know that the jurors were still there. I was trying to accommodate the gentleman.

By Mr. McConnell: You slay me with that accom-
400 modation of yours.

By Mr. Meserow: Your Honor, I would like, at this time, before Mr. Freeman begins, apparently he has indicated by some of the questions of this witness that he intends to go into this conspiracy question, and I think your Honor should admonish him that you will not hear an offer of evidence on the question of conspiracy, which he will try to do and we will object to. But we do not wish to have that in the record.

By Mr. Freeman: He has a right to object and I have a right—

By the Court: I will not admonish him. I have ruled. The record is clear. I will strike anything on the conspiracy. I will not permit it to remain of record, and I want the record complete before the Court of Appeals.

By Mr. Freeman: That is all. We want to make a complete record of our offer.

Mr. Feucht was interested in 1955 in seeing that they got the cheapest transfer rate; that he was a former director of the Willett Company, which was a subsidiary of the Pennsylvania Railroad, that he was of the opinion that the Willett Company was an excellent motor
401 carrier with broad transportation experience; that Willett was dropped out of the transfer negotiations

because its rate that it proposed was the same as the Parmelee rate, and under the circumstances Mr. Feucht would testify there was no reason to change from Parmelee—

By Mr. Thompson: We challenge the good faith of this offer. Mr. Feucht is here and he did not testify to any such statement.

By the Court: I didn't permit him.

By Mr. Freeman: He testified under oath previously.

By Mr. Thompson: He did not.

By Mr. Freeman: I like this good faith challenge.

By the Court: I say it may be stricken. I did not permit him to ask the questions.

By Mr. Freeman: (Continuing) That Mr. Cross called Mr. Feucht on May 13, 1955, and told Mr. Feucht that he was very much interested in seeing that Keeshin get this transfer contract; that in addition, he asked Mr. Feucht whether or not they were suffering any commuter losses, and that in passing he inferred that perhaps one of the things that the North-Western might do would be to have a rate increase;

That Mr. Feucht answered that "We have already just had one;" that shortly after, within five to ten minutes after Mr. Cross' call, Mr. Feucht prepared a memo-
402 randum, which has been identified here as Plaintiff's Exhibit No. 3, which does not represent Mr. Feucht's opinion but is only a briefed down statement of what Cross said;

That the memorandum points out that Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage and people between the various stations—

By Mr. Meserow: I object to all this reading about Cross and move it be stricken.

By the Court: Objection sustained. The document has been identified and it is marked, and we don't have to read it. Objection sustained.

403 By Mr. Freeman: I won't read it, but I want it in the record.

That Mr. Feucht regarded this call from Cross as unusual, and questioned its propriety; that Mr. Cross was only a casual acquaintance, and that he had never before spoken to Mr. Cross over the telephone;

That Mr. Feucht turned this memorandum over to Mr. Brennan; that either on that day or the next day, Mr. Brennan advised Mr. Feucht that rumors were floating all over Chicago that Cross was to have an executive post with Keeshin—

By Mr. Meserow: Objection, your Honor.

By the Court: Sustained. It may be stricken.

By Mr. Freeman: That on May 26th, Mr. Feucht was advised by his staff that they had received a telegram from Mr. Cross, which had been identified as Plaintiff's Exhibit 4; that Mr. Feucht advised his staff that he was going to leave for the week end, and that while Mr. Cross indicated that he would be in Chicago between May 31st and June 2nd and wanted to stop in for a talk with Mr. Feucht, that he instructed his office to call the matter of this telegram to his attention when he, Mr. Feucht, returned.

Mr. Feucht returned on June 1st at approximately
404 10:00 a.m.—

By Mr. Owens: Objection, your Honor.

By Mr. Freeman: (Continuing) And he was told that Cross had called—

By Mr. Owens: I have an objection, Mr. Freeman.

By the Court: Objection sustained.

By Mr. Owens: All of this is not material. I think he should be instructed to move on to something else that is material.

By the Court: Objection sustained.

By Mr. Freeman: I think it is very material.

He was told when Mr. Feucht returned to his office on June 1st that Mr. Cross had called and had left his number at the Union League Club;

That Mr. Feucht called the Union League Club, but did not reach Mr. Cross; that he discussed the telegram that he had received with Mr. Brennan, and he discussed the telegram with Mr. Nye F. Morehouse, his special counsel, and advised him that Mr. Cross was at the Union League Club, and asked him to contact Mr. Cross.

By Mr. Thompson: We object to this, in the first place, as not material; and, second, it is not in good faith and it isn't true, and Mr. Feucht will not so testify.

405 By the Court: Objection sustained.

By Mr. Freeman: That Mr. Morehouse met with Mr. Cross on June 2nd and reported back to Mr. Feucht, and Mr. Feucht and Mr. Brennan met late in the afternoon or in the evening of June 2nd, and decided for Keeshin because of the intervention of Cross.

By Mr. Meserow: Objection, your Honor.

By Mr. Owens: Objection.

By Mr. Meserow: How long must we be subjected to this type of offer of evidence when your Honor has ruled? It doesn't make any difference to Mr. Freeman. Your Honor has ruled there shouldn't even be an offer on conspiracy, and that is all he is talking about.

By the Court: Objection sustained. It may be stricken.

By Mr. Freeman: (Continuing) That during 1955 and during these contacts and intervention by Mr. Cross, there were pending before the Interstate Commerce Commission matters of tremendous importance to the Chicago North Western Railroad, including the establishment of class rates involving the transcontinental and mountain Pacific territories—

By Mr. Owens: Objection, your Honor.

By the Court: Objection sustained. It is stricken.

By Mr. Freeman: (Continuing) The matter of in-
406 creasing the coal rates by 35 cents a ton—

By Mr. Owens: Your Honor, objection.

By Mr. Meserow: He shouldn't be permitted to continue. I ask that he be cited for contempt for violating the order of Court if he continues. This goes to the Court of Appeals. We have no opportunity to refute these statements and accusations that he is making that are unfounded.

By Mr. Freeman: I am not making any accusations. This is the record that we ask an opportunity to prove, and I am understanding it.

By the Court: Objection sustained. Proceed.

By Mr. Freeman: That other matters were also pending before the Interstate Commerce Commission of great moment to the North Western at that time;

That the decision made for Keeshin by Mr. Feucht was a result of what happened over the twenty-four hours prior to June 3rd—

By Mr. Meserow: Objection.

By Mr. Keating: The witness has already testified he didn't make the decision. Now contrary to this, he is telling what the witness would say, and it is not correct.

By Mr. Freeman: There are certain inferences—

By Mr. Keating: Your Honor, he is making an
407 offer of proof, not stating inferences.

By the Court: Objection sustained.

408 By Mr. Freeman: I would like to call Mr. Nye Morehouse or make an offer of proof as to what he would say.

By the Court: Is he in court? If not, make your offer of proof.

By Mr. Freeman: Mr. Nye Morehouse was a vice-president and general counsel of the Chicago North Western Railroad from 1947 to 1954, but he retired on May 1, 1954 and remained as special counsel for rates and division cases.

He represented the Chicago North Western in proceedings before the Interstate Commerce Commission during 1955, including the class rates involving the transcontinental and mountain Pacific territories, division problems that arose out of those class rate cases and the increase in coal rates, the so-called coal rollback case involving shipments of coal into Wisconsin and Michigan points.

By Mr. Thompson: What has that got to do with—

By Mr. Freeman: Mr. Morehouse—

By Mr. Thompson: Please, Mr. Freeman, just a moment.

By Mr. Freeman: It identifies him and is very significant to what happened later.

By the Court: Proceed, Judge Thompson.

By Mr. Thompson: I don't know what you are
409 addressing yourself to, but anyway, I am inquiring whether or not this purports to be an offer of what Mr. Morehouse would testify to if he were here?

Mr. Morehouse is in the city. He is certainly in no sense a managing agent of this corporation. All they need to do is ask us to have him here, and we will have him here at 2:00 o'clock or a few minutes after.

By the Court: Objection sustained.

By Mr. Thompson: Mr. Morehouse is in town.

By the Court: Objection sustained to any offer of proof.

By Mr. Thompson: Do you want him at 2:00 o'clock? If you say so, he will he here.

By Mr. Freeman: Yes, I think we do.

By the Court: All right.

By Mr. Freeman: If the objection is to the form, then I would like the witness to be here.

By the Court: All right.

By Mr. Freeman: I would like to question him with respect to his meetings with Mr. Cross.

By the Court: I will sustain the objection.

By Mr. Freeman: To the form of the offer?

By the Court: No, to the fact that the witness is available.

410 By Mr. Freeman: Then I want him here.

By the Court: Yes. I am stating the objection.

By Mr. Freeman: All right.

By the Court: Proceed. What else have you got?

By Mr. Freeman: I would like to call Mr. Cross to the stand.

By the Court: I will sustain the objection.

By Mr. Keating: We haven't any jury.

By Mr. Freeman: Then I guess we will have to go to 2:00 o'clock, but I would like Mr. Cross at 2:00.

By Mr. Tone: You want Mr. Morehouse at 2:00 o'clock?

By Mr. Freeman: And Morehouse at 2:00.

By Mr. Thompson: Are there any others you want?

By Mr. Freeman: Yes.

By the Court: Mr. Cross, will you please step up here?

By Mr. Freeman: We don't have a jury, your Honor.

By the Court: Can we agree off the record that we could make that without the jury and the rulings will be the same? I am going to sustain any objection to Mr. Cross' testimony on anything that he did in this matter.

By Mr. Freeman: I think we ought to go ahead with him at 2:00 o'clock.

By the Court: This is clear in my mind. I am 411 going along with the plaintiff's right to make the offer of proof, that is all, but I am sustaining the

objection to that type of testimony and I am excluding it from the jury.

Now, if you want to be technical about it, we will have the jury at 2:00 o'clock. If you don't want to be technical, we can go through the same way, if there is no objection from either side.

By Mr. McConnell: We haven't any objection. I told your Honor that. We are trying to shorten it up.

By the Court: I am saying for the defendants, if there is no objection we will go on with him. If he testifies to anything admissible, I will have him repeat it before the jury.

I do not want the record to show that I have stopped the plaintiff from calling any witness because that would be reversible error, and it is improper, and I have no such notion.

412 By Mr. Meserow: On behalf of my defendants, I will not stipulate with the plaintiff.

By the Court: You will not?

By Mr. Meserow: No.

By the Court: All right. Two o'clock.

By Mr. Freeman: May I suggest to counsel the witnesses that I would like to call?

By Mr. Thompson: Please.

By Mr. Meserow: Your Honor, before we adjourn—

By Mr. Thompson: Let's be a little orderly. I have asked counsel what witnesses he wants, and he is trying to answer me.

By Mr. Freeman: Yes. We will want Mr. Morehouse, Mr. Cross, and then we will want Mr. Anderson, Mr. Gurley, and Mr. Duffy of the Santa Fe Railroad.

We will want Mr. Wayne Johnston, Mr. Small, and we will read the deposition of Mr. Hearne of the Illinois Central. Mr. Hearne is dead.

We will want Mr. Keeshin after. I think that will take us for a day or two. Then we will proceed with Mr. Simpson, Mr. Whittington, and Mr. Nelson after Mr. Keeshin.

By Mr. Thompson: Which ones will you want this afternoon?

By Mr. Freeman: This afternoon we will want Mr.
413 Morehouse, Mr. Cross and the Santa Fe witnesses. I think we can get them all done in one afternoon.

By the Court: Off the record. May I make a statement off the record?

By Mr. McConnell: Sure.

By Mr. Thompson: Yes, let's leave something off the record.

(Thereupon a discussion was had off the record, after which the following further proceedings were had herein:)

By the Court: Two o'clock, gentlemen.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, April 26, 1960.)

414 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Tuesday, April 26, 1960,
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

415 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

416 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By Mr. Freeman: I will call Mr. Cross, please.

By the Court: Bring in the jury. Do you want the jury?

By Mr. Freeman: Yes, your Honor.

By the Court: All right; bring out the jury.

By Mr. Thompson: I don't know why it wouldn't be all right to call each of these witnesses while the jury is here so we don't have to keep sending them in and out.

By the Court: There should be no objection to that.

By Mr. Freeman: Very well. I would just as soon do that, and we will dispense with the jury this afternoon. We will call for the witness which will keep us busy enough this afternoon.

By the Court: All right.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: All right.

By Mr. Freeman: Your Honor, I want to call several witnesses, and counsel has suggested that possibly
417 what I should do is have these witnesses called and sworn as witnesses, and just identify them, and then by reason of the questions that undoubtedly will be propounded, there will be objections, and the necessity of the offer of proof, and if we can bring forth sufficient witnesses, we possibly can occupy ourselves for the rest of the afternoon and excuse the jury.

By the Court: I think that is a very sensible and constructive suggestion, and if it meets with all the lawyers' approval, and there are no objections, I will accede to that suggestion.

By Mr. Freeman: My first witness will be Mr. Hugh Cross.

By the Court: Is there any objection?

By Mr. Meserow: No objection.

By Mr. Thompson: No objection.

By the Court: Let the record show by agreement of all parties, that will be the procedure.

By Mr. Freeman: Mr. Anderson of the Santa Fe—

By Mr. Thompson: Swear them one at a time and identify them for the record.

By the Court: All right.

By Mr. Freeman: Your Honor, Mr. Cross is one of the defendants in this case, and we call him as an adverse witness.

By the Court: Yes; you may call him adversely.

418 HUGH W. CROSS, called as a witness herein, for adverse examination by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address?

A. Hugh W. Cross, Jerseyville, Illinois.

Q. Mr. Cross, were you formerly a member of the Interstate Commerce Commission?

A. I was.

Q. In what year were you appointed?

A. 1949.

Q. When were you reappointed?

A. 1951.

Q. On that second appointment your term expired December 31, 1957, did it not?

A. That is right.

Q. According to the normal routine as a Commissioner, if a Commissioner is on the Commission long enough, he becomes chairman of that Commission, is that right?

A. Not necessarily.

Q. Did you become chairman of the Interstate
419 Commerce Commission?

A. I did.

Q. When did you become chairman?

A. July 1, 1955.

Q. Was it known in advance that you would become chairman at that time?

A. Not necessarily.

Q. Did you intend to serve out your full term through 1957?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By Mr. Owens: Objection as immaterial.

By the Court: Sustained.

By Mr. Freeman:

Q. Did you resign from the Commission?

A. I did.

Q. When did you resign?

A. November of 1955.

Q. Was that following an investigation by a Senate—

By Mr. Thompson: We object.

By Mr. Owens: Objection.

By Mr. McConnell: Let him ask the question, please.

By the Court: Let him ask the question.

By Mr. Thompson: It has been ruled out already.

420 By Mr. McConnell: He has a right to ask a question.

By Mr. Thompson: He ought to observe the rulings of the Court made at the pre-trial.

By Mr. Freeman: I am observing the rulings of the Court. Counsel is not observing the rulings of the Court or the decorum of an attorney.

By the Court: Finish your question.

By Mr. Freeman:

Q. And Mr. Cross, was that resignation the result of an investigation by the Government Operations Committee, the so-called McClelland Committee, which was conducted in November of 1955?

By the Court: The objection is sustained, and he does not have to answer the question.

By Mr. Freeman:

Q. Mr. Cross, did you resign from the Commission in order to avoid a public hearing before that Committee?

By Mr. Meserow: Objection.

By the Court: The same ruling.

By Mr. Freeman:

Q. Mr. Cross, I would like to ask you now your
421 relationships with Mr. Keeshin.

First, did Mr. Keeshin approach you in the latter part of March, 1955 to put in a good word for him with the railroads with whom he was negotiating for the transfer contract?

By Mr. Meserow: I object to the question, and I think we have reached the point of the offer of proof now.

By the Court: Sustained. I am sustaining the objection.

By Mr. Freeman: Let me ask a few more questions.

By the Court: I am sustaining the objection, and the witness does not have to answer.

By Mr. Freeman:

Q. Mr. Cross, did Mr. Keeshin ask you to help him get the transfer contract with the railroads with which he was negotiating?

By Mr. Meserow: I object as not material to the issues in the trial.

By the Court: Sustained.

By Mr. Freeman:

Q. Mr. Cross, did you contact presidents of these—
several of the presidents of the six railroads who
422 comprised the negotiating committee for the Chicago transfer contract?

By Mr. Meserow: I object to the question, your Honor.

By the Court: The same ruling.

By Mr. Meserow: I think this man is deliberately poisoning the minds of the jury with these questions, and I think the jury should be excluded and let him make his offer of proof.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Cross, did you, as a Commissioner of the Interstate Commerce Commission, first travel to Baltimore to see the president of the Baltimore and Ohio Railroad, then travel to Philadelphia to see the vice-president of the Pennsylvania Railroad, and then travel to Chicago to see the presidents of the North Western, the Illinois Central and the Santa Fe Railroads in Chicago with this Chicago transfer situation?

By Mr. Meserow: Objection.

By the Court: That has been ruled out, and it is inadmissible and improper, and I think we will refrain from going on with that.

423 By Mr. Freeman: Then I will make an offer of proof, and we can take the next witness.

By the Court: All right; take the next witness.

By Mr. Freeman: Thank you, Mr. Cross.

(Witness excused.)

424 By Mr. Freeman: I will now call Mr. Anderson. Mr. Anderson is likewise being called as a managing agent of the Santa Fe Railroad and as an adverse witness.

By the Court: All right.

RAYMOND T. ANDERSON, called as an adverse witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name, please, Mr. Anderson?

A. Raymond T. Anderson.

Q. And your position?

A. General passenger traffic manager of the Santa Fe Railway.

Q. How long have you held that position?

A. About eleven years.

Q. And you were the general passenger traffic manager of the Santa Fe Railroad in 1955?

A. Yes, sir.

Q. Who was the individual in the Santa Fe organization who attended the Chicago Terminal Lines meeting and reported to you with respect to it?

425 A. That was John Sloan.

Q. And did he prepare a memorandum in the normal course of your business dealings with his committee meetings and negotiations of the Chicago transfer problem?

A. He did.

Q. Did you read and review those memoranda?

A. Yes, sir.

Q. And on occasion, on many occasions you actually signed the memoranda for transmittal to your vice president, Mr. Duffy, did you not?

A. Well, I either signed them or check-marked them, yes.

Q. Did you agree with the memoranda that Mr. Sloan prepared?

By Mr. Thompson: I object to that as immaterial.

By the Court: Objection sustained.

By Mr. Freeman: Sustained?

By the Court: That he agreed with the memoranda.

By Mr. Freeman: Let me identify these and we will see. I would like to have identified first as Plaintiff's

426 Exhibit No. 6 this document taken from the Santa Fe files and coded Santa Fe 74, the memorandum from Mr. Anderson to Mr. Duffy, dated January 7, 1955.

If I may make my offer or my identification together to save time, as Plaintiff's Exhibit No. 7, this memorandum initialed J.L.S. to Mr. Anderson dated February 15, 1955, and coded as Santa Fe 73.

As Plaintiff's Exhibit No. 8, this three-page memorandum dated March 18, 1955, from R. T. Anderson to Mr. Duffy, and as Plaintiff's Exhibit No. 9, this two-page memorandum dated May 23rd, 1955, from Mr. R. T. Anderson to Mr. Duffy, and as Plaintiff's Exhibit No. 10, this two-page memorandum dated June 6, 1955, from Mr. R. T. Anderson to Mr. Duffy.

(Thereupon the documents were marked Plaintiff's Exhibits 6 through 10, inclusive, for identification.)

427 By Mr. Freeman: In conjunction with my earlier offers this morning, I had forgotten to identify for the record, although I did refer to them as Plaintiff's Exhibits 1 and 2, two documents, which I would like the record to show I have had the reporter identify.

By the Court: It may so show.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 1 and 2 for identification.)

By Mr. Freeman:

Q. Mr. Anderson, will you look at Plaintiff's Exhibits 6, 8, 9 and 10—I am leaving out Exhibit 7 for the moment—and tell me whether or not these memoranda were signed by you and sent out to the vice-president of your railroad, Mr. Duffy?

A. Yes, they were.

Q. Did you also see and read the memorandum that has been identified as Exhibit 7?

A. Yes.

Q. And indicate your agreement in the margin of that memorandum?

A. Yes, sir.

Q. Were these memoranda prepared in the regular
428 and normal course of your railroad's business?

A. That is right, yes, sir.

Q. Do they express what happened in connection with some of the occurrences in connection with the Chicago transfer negotiations?

A. I assume so. It was all handled by Mr. Sloan and I accepted his reports as such.

Q. And you transmitted the reports on to the vice-president?

A. Yes, sir.

Q. Is the vice-president the highest officer that you report to?

A. Yes, sir.

By Mr. Freeman: I offer in evidnce Plaintiff's Exhibits 6 through 10, both inclusive.

By the Court: Have counsel seen them?

By Mr. Thompson: May I ask the witness a couple of questions?

By the Court: Yes.

Interim Cross Examination by Mr. Thompson.

Q. Mr. Anderson, did you attend any of these meetings of the negotiating committee that was engaged
429 in considering the bids on this local transfer situation?

A. No, sir.

Q. Are these memoranda which are addressed to Mr. Duffy, which you have identified, and all of which bear your name in typewriting, R. T. Anderson, were they prepared by you or were they prepared by Mr. Sloan?

A. Prepared by Mr. Sloan.

Q. And is it the protocol of the railroad for Mr. Sloan, who was one of your assistants, to address the

memoranda to the vice-president and then transmit them in your name as the general passenger traffic manager?

A. Yes, sir.

Q. This memorandum here, Plaintiff's Exhibit 7, which bears the initials "J.L.S.," and it is addressed to you, on February 15, 1955, that was Mr. Sloan, the "J.L.S."?

A. Yes, sir.

Q. And that was not addressed to the vice-president?

A. Yes, sir, it was not.

By Mr. Freeman: May I ask a few more questions?

430 *Direct Examination (Continued) by Mr. Freeman.*

Q. Mr. Anderson, were these memoranda transmitted to you in the normal course of your railroad's business?

A. Yes, sir.

Q. Were they read and reviewed by you?

A. Yes, sir.

Q. Mr. Anderson, did the views expressed in these memoranda represent your views at the time of the transmittal of the memoranda?

By Mr. Thompson: We object to that and move to strike the answer, if any, on the ground that they are memoranda prepared in the regular course of business by Mr. Sloan through Mr. Anderson's name, and they are not his memoranda or events that he had any knowledge of. In other words—

By the Court: He may answer. The question was whether they expressed his views.

By Mr. Freeman: What was your answer, Mr. Anderson?

By the Witness: Will you repeat the question?

By the Court: Do they represent your views?

431 By the Witness:

A. Yes, I think they would.

By Mr. Freeman: I offer the documents in evidence.

By Mr. Thompson: We object to them as irrelevant to the issue before the Court.

By the Court: May I see them?

By Mr. Thompson: It is hearsay.

By the Court: Let me reserve my ruling until you make the offer of proof.

432 By Mr. Meserow: I object on behalf of my clients for the additional reason that they are not binding on my clients, hearsay as to them, and not relevant to the issue of public injury.

Your Honor has ruled that the method of procuring this contract is outside the scope of the issue in this case.

By Mr. Thompson: Well, I hadn't finished my objection.

By Mr. Meserow: I am sorry.

By Mr. Thompson: When I do finish, I will sit down.

By the Court: Proceed.

By Mr. Thompson: I object also on behalf of all of the railroad defendants other than the Santa Fe that it is hearsay, that is, they are not in any wise bound by it, having had no participation in it and no knowledge of it so far as any showing has been made.

I object on behalf of all of the individual defendants that there is no evidence that it was called to the attention of any of them or that any of them had any 433 knowledge of the contents of the documents and, at least, of the character of hearsay as to all of them.

By Mr. Freeman: With respect to Mr. Meserow's point, your Honor, you will find, if you will read Exhibit 9, the memorandum of May 23rd, that there is considerable discussion of the relative merits of the Keeshin Parmelee proposal, and that the memorandum does speak rather eloquently of the Parmelee proposal.

It is admission against interest, of course. All of these documents are admissions against interest, and that is the ground on which Mr. Thompson seeks to exclude them.

By Mr. McConnell: If your Honor please, may I address myself to one objection which was made on the ground of hearsay.

By the Court: Surely.

By Mr. McConnell: The witness has testified here that these documents were made in the regular course of the business of the railroads. We have a regular business
434 entry statute which is enforced in the Federal Courts. 28 U.S. Code Annotated—

By the Court: They will only be received in evidence against the wifness' company, and I exclude them as against the other defendants.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 6 through 10.)

By Mr. Freeman: I would like to read the documents to the jury, please.

By Mr. Meserow: I am going to object to that, your Honor. Your Honor excluded them.

By Mr. Freeman: He cannot tell me what to do.

By Mr. Meserow: I am not talking to you. Your Honor ruled that it is excluded as far as my clients are concerned. Why should we be prejudiced before the jury now by his reading the documents?

By Mr. Freeman: We have alleged a conspiracy.

By the Court: The conspiracy is out, and I have sustained the objections on that, and you can't read
435 them on that theory.

By Mr. Freeman: We are reading them on the ground that you have allowed them.

By Mr. Meserow: It is not material to the issue of public injury, your Honor.

By the Court: I have sustained objections as against all defendants except the railroad company and the witness.

By Mr. Meserow: Are you instructing him not to read them?

By the Court: That is right. You can make your offer of proof.

By Mr. Freeman: You have admitted them into evidence, but I can't read them to the jury?

By the Court: Only against the one defendant.

By Mr Keating: Tell them which defendant.

By Mr. Freeman: All right. Only listen to this on behalf of the Santa Fe.

By Mr. Thompson: That has nothing to do with the question of public injury.

By Mr. Freeman: I would like to read Plaintiff's Exhibit 6, which is a memorandum—

436 By the Court: It is before the contract was signed, and they have reference to the question of $1.20, and they may have some relevance to the issue.

You may proceed.

437 By Mr. Freeman: I will read to you first a memorandum from Mr. Anderson to Duffy, dated January 7, 1955:

"Referring to our memorandum of April 27, 1954, File Y-3, advising of agreement made with Parmelee Transportation Company through June 30, 1955, and our later memorandum of October 7, 1954 advising that the coupon rate from July 1, 1954," and so forth.

"A committee consisting of the line in each terminal paying largest amount to Parmelee was appointed to contact other transfer companies in Chicago capable of performing the operation to ascertain if a lower

price could be secured for transfering passengers and baggage between stations in Chicago. A memorandum was prepared outlining the transfer problem and presented to each of the companies contacted and an interview was arranged with the companies interested to answer their questions and progress the matter. We have received a bid from Mr. J. L. Keeshin
438 for transfer of passengers and baggage at charge of $1.20 per coupon, with an escalator clause, and the bid also includes proposal that station forces load and unload trailers which would be hauled between stations by tractors—loading and unloading with our own men would be additional expense for the carriers. A bid was received from the Landon Co. for the transfer of checked baggage only. The Railway Express Agency advised that they would only be interested in the handling of baggage, and this they would do on a 15 per cent plus cost basis.

"The committee is still waiting for a proposal from the Willett Company, and from Mr. Sid Engelhart of New York. When these last two proposals are received they will be presented along with the others to the Chicago Terminal Lines, however, the committee working on the problem did not feel that a change should be made in contractor unless there is a substantial reduction in price.

"The Parmelee Co. has been advised of request
439 made on other contractors for bids made for transfer service, and it has been suggested to them that they come up with a better proposition for the transfer service after July 1, 1955."

Then on February 15, our Exhibit 7, Mr. Sloan wrote to Mr. Anderson, and Mr. Anderson in the margin indicated "I agree," as follows:

440 "At a meeting of Chicago Terminal Lines February 1st, report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately same rate Parmelee is now charging, and one bid for transfer of baggage only. Chairman Padrick advised lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, bid of $1.10 or $1.00 including baggage was submitted by some transfer company.

"Up to this time, the Willett Motor Coach Co. had indicated interest in submitting a bid, but had delayed submission in order to study the matter further—"

By Mr. Keating: Carefully.

By Mr. Freeman: Carefully, I am sorry. I am
441 skipping a sentence or two, and then I want to read on. In the last paragraph:

"Mr. Bone thinks that we should go very slow on any change in operators. We have had no word from Parmelee about any increase or decrease in charge for coupon although they have been advised by Mr. Padrick of the study being made and told that we believe they should come up with some changes that will reduce the transfer cost."

Then on March 18—no, I will skip reading that to you, and read instead Exhibit 9, which is a memorandum of May 23, 1955, from Mr. Anderson to Mr. Duffy:

"Supplementing our memorandum of March 18th, and previous advices about progress of committee of Chicago Terminal Lines studying transfer of passengers and baggage in Chicago.

"The committee met Thursday morning with Mr. J. L. Keeshin, and Thursday afternoon with Mr. M.

Markin, to review their proposals. We understand that Mr. Keeshin has appealed to the executives of
442 the B&O, Pennsylvania, C&NW, and possibly other lines for favorable consideration of his bid. Mr. Keeshin passed a statement around at the meeting showing the amount of freight revenue billed through the truck rail terminal in Chicago which he operates—Pennsylvania received the largest revenue over one million dollars. Other carriers in Eastern territory and carriers operating between Chicago and St. Paul received large amount—Santa Fe received approximately $3,000 revenue.

"Mr. Keeshin proposed to furnish air conditioned, radio-phone controlled eight-passenger station wagons supplemented with some larger equipment for the transfer of passengers, and twenty-foot trailers on a two-hour dispatch for the transfer of baggage. Coupon rate for the transfer of passengers and baggage will be $1.20 for the first year, $1.22 for the second year, $1.23 for the third year, the coupon rate for the fourth and fifth years to be increased one cent for
443 each three cents of wage increase. If Mr. Keeshin is the successful bidder, the drivers would come under a different union and would have to pass a physical examination—Mr. Keeshin is positive there will be no union difficulties.

"We have operated with Parmelee without a contract, but it is felt that in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of passengers and baggage effective July 1, 1955, with an increase of one cent in the coupon rate for each three cents of wage increase, with a maximum of a five-cent

increase over the five-year contract and a maximum coupon rate in each year as follows: July 1, 1956, $1.22; July 1, 1957, $1.23; July 1, 1958, $1.24; and July 1, 1959, through June 30, 1960, $1.25.

444 "Mr. Markin states that he will spend $500,000 in the next 18 or 24 months if he is successful bidder to replace trucks with a new type of vehicle and to add 30 new 12-passenger limousines to his present fleet of 20 which will enable the retirement of the older 7-passenger limousines. The other Parmelee services will be continued unchanged, baggage transfers being handled on a two-a-day basis which has been satisfactory.

"There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago Terminal Lines. We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submited by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition, we will avoid the possibility of labor

445 trouble in connection with operation by a new company with different union."

I won't bother to read Exhibit No. 10.

By Mr. Freeman:

Q. Mr. Anderson, in 1955, were you satisfied with the Parmelee service and your railroad's relationship with Parmelee?

A. Yes, I would say we were.

Q. Mr. Anderson, did you know of the decision to vote for Keeshin prior to the June 3rd committee meeting?

A. No, sir.

Q. Did you find out about it after your railroad had voted for Keeshin?

A. Yes, sir. I was out of town at the time.

Q. Mr. Anderson, would you say that the report and recommendation of this committee of six railroads who were doing the negotiating was determinative of the issue and would in effect bind the other fifteen railroads forming the twenty-one constituting the Chicago Terminal Lines?

A. No.

446 By Mr. Thompson: We object to that as calling for a conclusion which the witness certainly can't answer.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Let me ask this: Did you feel or have you previously testified that the Chicago Terminal Lines depended on the committee of six railroads to make a recommendation which would be the decision on the subject?

By Mr. Thompson: We object to that.

By the Court: The same ruling. Objection sustained.

By Mr. Freeman: I will offer to prove through this witness, and I don't think it is prejudicial to the jury, that—

By Mr. Thompson: I object to any statement of any offer of proof.

By Mr. Freeman: The next witness can testify and I will then make my offer.

By the Court: All right.

By Mr. Freeman: Thank you, Mr. Anderson. Mr. Gurley.

By Mr. Thompson: We have not been able to
447 locate him. Mr. Anderson, wait a minute, before you leave.

We have not been able to locate Mr. Gurley. They asked us just before noon to have him here, and we can't find him. He is retired, of course, and where he is, I don't know.

By the Court: Will you stipulate to let him make the offer of proof in his absence?

By Mr. Thompson: They can read his introduction.

By the Court: I beg your pardon, Judge? I didn't hear you.

(The record was read as above recorded.)

By the Court: Then let it be stipulated by the parties that Mr. Gurley—

By Mr. Freeman: That Mr. Fred G. Gurley was, in 1955—

By the Court: That he may be considered as having been called to testify.

By Mr. Thompson: Let's wait until Mr. Gurley gets here. We will find him.

By the Court: All right.

448 By Mr. Thompson: He is in town somewhere. He was yesterday. Here is Mr. Duffy, if you want Mr. Duffy.

By Mr. Freeman: You wanted Mr. Anderson?

By Mr. Thompson: I am sorry. Yes.

Cross Examination by Mr. Thompson.

Q. Mr. Anderson, in this memorandum of January 7, 1955—

By Mr. Freeman: The 6th.

By Mr. Thompson: Who said 6th?

By Mr. Thompson:

Q. In this memorandum of January 7, 1955, there is a reference made, which is the one Mr. Freeman just read to the jury, and there is a reference made to a memorandum of April 27, 1954.

I show you a document, which we will have marked for identification as Defendants' Exhibit No. 1.

(Thereupon said document was marked Defendants' Exhibit No. 1, for identification.)

By Mr. Thompson:

Q. (Continuing) And I inquire whether that document is the memorandum of April 27, 1954, to which the 449 other memorandum was a supplement or direction?

A. It was.

Q. And this memorandum of April 27, 1954, bears a typewritten signature of yours, or name, rather, and who prepared that memorandum?

A. Mr. Sloan.

Q. And that memorandum was prepared in the regular course of reporting through your name to Mr. Duffy, the vice president, is that right?

A. Yes, sir.

By Mr. Thompson: We think that counsel ought to finish the document that he read to the jury and read this memorandum at the same time.

By Mr. Freeman: I will be glad to if you are tired.

By the Court: I can't compel him to do that, but I say they are both marked and identified and in the record.

By Mr. McConnell: We have a right to present our case.

By the Court: That is right, and I am not going to require you to do it.

By Mr. Thompson: I appreciate your thought, your 450 Honor, but he just said he was willing to do it.

By the Court: By all means let him do it.

By Mr. Thompson: That is all, Mr. Anderson.

(Witness excused.)

By Mr. Thompson: Just a minute, if you please.

By the Court: All right.

GERALD E. DUFFY, called as an adverse witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name?

A. Gerald E. Duffy.

Q. And your occupation?

A. Vice president of traffic, the Santa Fe Railroad, Chicago, Illinois.

Q. Were you vice president of traffic in 1955?

A. I was.

By the Court: Which railroad? I didn't hear that.

451 By Mr. Freeman: The Atchison, Topeka, and Santa Fe.

By Mr. Freeman:

Q. What is your address?

A. The Railway Exchange; Chicago, Illinois.

Q. Mr. Duffy, in 1955 did you make any independent investigation of the transfer issue?

A. Personally, no.

452 Q. Did you rely upon the data accumulated and the memoranda submitted to you through Mr. Anderson?

A. To the extent I have any knowledge of the subject, yes.

Q. Mr. Duffy, I am going to ask you to discuss with us the meetings that you had with Mr. R. G. Rydon. Who is he in the Santa Fe Railroad?

A. The vice-president in the executive department of the Santa Fe Railroad.

Q. Is his named spelled R-y-d-o-n?

A. That is right.

Q. Did you have two meetings with Mr. Rydon shortly before June 3rd when the committee was to meet on the transfer issue?

A. I did.

Q. And at this first meeting did Mr. Rydon tell you that the president of the railroad wanted to know the status of the transfer negotiations?

A. That is correct.

By Mr. Thompson: We object to all of this. It is hearsay as to everybody except the Santa Fe Railroad.

By the Court: Objection sustained as to everybody except his own railroad.

453 By Mr. Freeman: You know what our theory is.

By Mr. Freeman:

Q. Did you advise Mr. Rydon that you had a memorandum prepared as of May 23rd, which was a recommendation of your passenger people for Parmelee?

A. I don't think you said that just right. I had a memorandum from Mr. Anderson — prepared by Mr. Anderson covering the subject that you indicated.

Q. I asked you whether you advised Mr. Rydon of that memo.

A. I did, yes, sir.

Q. Did you furnish him with a copy of it?

A. I am not too certain whether I did or not, but he certainly got the information contained in the memorandum.

Q. Did Mr. Rydon come back shortly thereafter and tell you of his conversation with President Gurley?

A. He came back in a day or two days, very shortly thereafter.

Q. Weren't you waiting outside Mr. Gurley's office at the time he had this second meeting with you?

A. No, sir.

Q. Did Mr. Rydon at this second meeting advise you that he had discussed the transfer issue with Mr.
454 Gurley and that he wanted to know from you if it was possible to give the contract to Keeshin without injuring the Santa Fe?

A. Well, I think something to that effect was said, yes, sir.

Q. Didn't he say exactly that?

A. Well, I am not going to take the quotation as exact, but the substance of the quotation is correct.

By Mr. Meserow: I object to the question and ask the answer be stricken because it is —

By the Court: I will rule it is not admissible against any of the defendants, as I said, excepting his own company.

By Mr. Meserow: It is outside the issues of this trial.

By the Court: That goes without saying on the general ruling. We are going on with the same ruling on the same basis.

By Mr. Freeman:

Q. In other words, it is fair to say that Mr. Rydon was asking you whether it was possible, without hurting the Santa Fe, to give this contract to Keeshin?

A. I think that is a fair summary of the conversation.

Q. Did you then call Mr. Sloan into your office?

455 A. No, I don't think I did at that time.

Q. Pardon?

A. At that time I don't think I did.

Q. Did you call him into your office or did you have a meeting with Mr. Sloan prior to the June 3rd committee meeting that he was to attend?

A. I had one, yes, sir, after Mr. Rydon's visit.

Q. Did you advise Mr. Sloan of your conversation with Mr. Rydon and of the president's interest in the transfer?

By Mr. Thompson: If the Court please, I should think it would be proper for counsel to ask the questions instead of testifying himself.

By Mr. Freeman: This is an adverse witness, your Honor.

By Mr. Thompson: That doesn't mean you can recite his testimony, your Honor.

By Mr. Freeman: I don't intend to recite his testimony, and this man is completely independent of me.

By the Court: Proceed.

By the Witness: May I have the question?

By Mr. Freeman:

456 Q. May I give it to you again?

A. Yes, sir.

Q. Did you instruct Mr. Sloan to vote for Keeshin as a matter of policy?

A. The answer is yes.

Q. Did you advise Mr. Sloan that Mr. Gurley had sent the orders down to that effect?

A. I am not too sure of whether I did or not. I am very honest that I don't know when I gave him the orders to vote for Mr. Keeshin.

Q. To vote for him as a matter of policy?

A. That is right.

By Mr. Freeman: I have nothing further of Mr. Duffy.

By the Court: Are there any other questions? If not, thank you very much.

(Witness excused.)

By Mr. Freeman: I would now like to present, in the absence of Mr. Gurley — and if he is here, I will go on with him, or I will take him whenever he comes.

457 By Mr. Thompson: Mr. Morehouse is here, who you wanted to examine.

By Mr. Freeman: I will dispense with Mr. Morehouse. We won't take him. This is the deposition of Mr. P. H. Sullivan, who is the assistant passenger sales manager for the Sou Line and who lives in Minneapolis.

His deposition was taken in Minneapolis.

By the Court: You may proceed.

By Mr. Freeman: Will you excuse me a moment while I find the deposition?

By the Court: Yes.

By Mr. Freeman: Rather than delay the court while Mr. Borst finds Mr. Sullivan's deposition, I can go on with any other witnesses that you have. Is Mr. Wayne Johnston of the Illinois Central here?

By Mr. Thompson: You didn't ask for him to be here today.

By Mr. Freeman: Possibly it will take the rest of the afternoon for my offer of proof, your Honor.

By Mr. Thompson: Just a minute. Mr. Padrick is here. You don't want him, do you?

By Mr. Freeman: No.

By Mr. Thompson: We have not located Mr. Gurley yet.

By Mr. Freeman: I also want to read the deposition of Mr. Clarence Diver, who is an attorney in Wau-
458 kegan, Illinois, more than one hundred miles from here, in connection with Mr. Cross' testimony, and I would want to read the deposition of Mr. Miller, who is a real estate broker located in Washington, D.C., more than one hundred miles from here.

I would like to read the deposition of Mr. M. E. Kline, the former manager of the Coal Traffic, Rates and Sales of the Pennsylvania Railroad, so I do think I can have enough to occupy us for the rest of the afternoon.

By the Court: Except you want the depositions read before the jury, unless it is otherwise agreed?

By Mr. Freeman: Unless it is agreed.

By the Court: Unless it is agreed they may be read—

By Mr. Freeman: All of these depositions, except the one of Mr. Sullivan, would have to do with Mr. Cross' participation in what we are pleased to call a conspiracy or part of that type of proof of our public injury.

By the Court: Do you insist on reading them before the jury?

By Mr. Freeman: If counsel has no objection, I would just as soon excuse the jury.

By Mr. Thompson: It is news to me geographically that Waukegan is more than a hundred miles from here.

459 By the Court: I will not stand on a few miles here more or less. I heard that, but I passed it up.

By Mr. Freeman: Isn't it really?

By Mr. Thompson: No; it is only half that far, and that is not just a few miles, your Honor.

By the Court: If you make an objection validly, I will listen to it.

By Mr. Meserow: I am objecting, because these depositions have nothing to do with the issue of public injury, and your Honor has excluded them on a previous ruling.

By the Court: Did I?

By Mr. Meserow: Yes.

By the Court: Then I certainly will stand by my ruling.

By Mr. Freeman: I would like to read these before the jury, and you will have an opportunity to make objections.

By Mr. Thompson: Of course, three of them have to do with real estate transactions which your Honor has

ruled out, and therefore to have them read is a violation of the ruling already made.

By the Court: I am relying on your guidance. Have I passed upon these exhibits?

By Mr. Meserow: Yes.

460 By Mr. Thompson: Mr. Diver's deposition and Mr. Kline's deposition and Mr. Miller's deposition.

By the Court: Did I rule upon them, Mr. Freeman?

By Mr. Freeman: Well now—

By Mr. Thompson: Now then, Mr. Freeman, don't you—

By Mr. Freeman: Mr. Thompson, don't start accusing me, if that is what you were going to say. Your ruling did not deal with any oral testimony. Your ruling said we would have a right to present oral testimony.

461 By the Court: My impression is that I did not rule upon the areas, even though I had been requested, and I finally got the transcript of Judge Robson, and I did not rule upon areas of testimony.

I excluded documents, certain documents and admitted some.

By Mr. Freeman: You said with respect to the exclusion—

By the Court: That I would determine the question of admissibility of testimony if and when it was presented.

By Mr. Freeman: And also with respect to documents, that you would determine that issue, too.

By the Court: Yes, that if it became material I would let them in. There is no question about it.

By Mr. Thompson: It is perfectly obvious without any further horsing around about it by counsel for the plaintiff, that this testimony respecting the real estate transactions, of which your Honor is fully familiar by reason of the presentation of the documents, has nothing whatever to do with the public interest.

By the Court: If and when I hear it, I am going to rule upon it.

By Mr. Thompson: It has nothing whatever to do with the public interest. The damage is already done when
462 you shovel it in.

By the Court: No, sir, it will not be done until I get some inkling what it is. I am not a mindreader.

By Mr. Thompson: All right.

By the Court: If and when he makes a statement, if they pertain to a real estate deal in which documents were offered and I sustained them, I will exclude that transaction from the record primarily because it is in the conspiracy and hasn't any probative value on the question of public injury.

By Mr. Thompson: That is exactly what this has to do with.

By Mr. Freeman: Let me say one thing in that connection. We have said it many times, but let me say it again.

As Mr. McConnell has said, we feel the question of public injury also includes the matter of conspiracy, and we have also urged, as a matter of public injury, the public services of Mr. Cross were violated and this, too, constitutes a public injury we should be permitted to go into.

By the Court: Let's have it understood now, that I will not consider that as part of a public injury in that phase. You may make an offer of proof if and when the jury is not in the box, but I will not permit any
463 testimony, because any direct, immediate and exclusive bearing on conspiracy will not go before the jury here.

By Mr. Freeman: If we can agree that all of these depositions that I have enumerated, except Mr. Sullivan's, have to do with certain phases of Cross' activity that

have relation to the conspiracy phase of our proof of public injury, we can then go ahead and read them outside the presence of the jury on the theory that you would rule consistently.

By the Court: That is right.

By Mr. Freeman: That they are to be excluded.

By the Court: And I want to be as consistent as I know how.

By Mr. McConnell: As I understand it, your Honor, what we are trying to do is prevent having the jury run in and out of the court room. We are trying to do what we can before the jury, and I would suggest that we go ahead with what we can do before the jury without having them running back and forth here and out in Limbo somewhere, not knowing what is going on.

By the Court: Who said you can't?

By Mr. Freeman: Mr. Simpson is president of the Baltimore and Ohio and a defendant. Unfortunately, despite all of these papers, I think we have failed to
464 get about half of the depositions that were taken, and I believe Mr. Borst is downstairs trying to get the out of town depositions.

By the Court: They must be here.

465 By Mr. Freeman: May we have a recess for five minutes?

By the Court: Yes.

(And thereupon the following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: Mr. Simpson is the president of the B&O and is in Baltimore, of course, and he is a defendant, and he is an officer of a defendant, and therefore he can be called under these rules and this deposition can be read.

Mr. Whittington is also the general passenger traffic manager of the Baltimore and Ohio, and I assume he comes within this designation of a managing agent.

Those two men are both in Baltimore, and I can't think that any of their testimony has to do with this limited issue which your Honor has indicated.

By Mr. Freeman: Oh, yes.

By Mr. Thompson: But Mr. Whittington's testimony, as far as we are concerned, who had to do with this whole thing, could be given at length, and we will produce him here if they want to examine him.

As far as Mr. Simpson is concerned, it seems to me that there is no point in having him travel here from Baltimore to put him on the stand and swear him.

466 By Mr. Freeman: I think that is right, and we can read his deposition. That is one of the reasons why I have asked for the deposition to come in.

By Mr. Thompson: Whittington you want here?

By Mr. McConnell: We have not asked for either one of them. We are just asking to read the depositions. That is all we want to do. We have a right to read his deposition, as you can see. We have no argument about that.

By Mr. Thompson: They did ask that they be produced here, and that is when we were going to try this full dress, I suppose.

By Mr. Freeman: Let me leave Whittington. If we need him, I will tell you in plenty of time. We will want Mr. Nelson of the B&O, and we will read Mr. Simpson's deposition here.

Mr. Nelson is here in Chicago, and can you bring him?

By Mr. Thompson: Yes.

By Mr. Freeman: We have asked for the Santa Fe people, and the only person you have not brought is Gurley, and I understand about that.

With respect to the Illinois Central, can you get Mr. Wayne Johnston and Mr. Smart?

By Mr. Thompson: Both of them will be here in
467 the morning, and Mr. Gurley will be here in the morning.

By Mr. Freeman: With respect to the Pennsylvania Railroad, we want Mr. Carpi's deposition, if it is not convenient for him to be produced, and we will understand that, and we will read Mr. Comer's deposition and Mr. Kline's deposition. I don't know whether you can get ahold of Mr. Holt, who is retired, and if you can't get him, tell us.

In the case of the New York Central, we want Perlman, Baird, Fawcett and Bone. We will have two or three other witnesses, and we will get together.

I may serve you with a few subpoenas to bring certain documents in that I want that you have not produced yet, and I will try to do that tomorrow.

By Mr. Thompson: You want Keeshin after all of these?

By Mr. Freeman: I would like Mr. Keeshin as long as we are here when we get to a pause now, and we will go on with Mr. Keeshin.

If Mr. Gurley and the other witnesses are here tomorrow, I would rather have them first and then Mr. Keeshin.

We would like Mr. Quackenbush tomorrow morning, if we can have him. I know he is not here now and rightly excused. There are a few questions we would like to
468 ask him in person.

By the Court: All right; we will take a recess.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

469 (Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: What is the program? Do you have any witnesses?

By Mr. Freeman: We have a deposition that we want to read to the jury.

By the Court: Do you want to call a witness first? If you are going to read depositions, I can excuse them and let them go home.

By Mr. McConnell: We have to read the deposition to the jury. This is evidence on your issue; right on it. It is right on the issue.

By the Court: All right. Bring out the jury.

By Mr. Meserow: Whose deposition is this?

By Mr. McConnell: P. H. Sullivan.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: These minutes get longer, don't they ladies and gentlemen?

All right; proceed.

By Mr. McConnell: May it please the Court, I 470 want to read into evidence the deposition of P. H. Sullivan, taken pursuant to a notice under the Federal Rules of Civil Procedure, at 1630 Rand Tower in the City of Minneapolis, State of Minnesota, at 2:00 o'clock on the 9th day of August, 1957, before Jack Penman, a notary public of the County of Hennepin, State of Minnesota—

By the Court: Do the jurors understand what depositions are? These are documents reporting and recording evidence, taken of an absolute witness, not in the presence of the Court but under oath, and when read before

a jury has the equivalency of testimony on the witness stand.

By Mr. McConnell: This witness is obviously more than a hundred miles from the court house.

By the Court: That is all right.

By Mr. McConnell: I don't think we will bother having anybody on the stand. I will just read it, if it is all right with your Honor.

"P. H. SULLIVAN, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens.

Q. Will you state your name, please?

471 A. Paul—do you want the full name, the middle initial, and everything?

Q. You might as well give us your middle initial.

A. Paul H. Sullivan.

Q. And are you here in response to a subpoena, Mr. Sullivan?

A. Yes.

Q. And is this the subpoena which was served upon you?

A. Yes."

By Mr. McConnell: Then there was marked Sullivan Exhibits 1 and 1-A, two documents.

By Mr. McConnell: (Reading)

"Q. What is your occupation, Mr. Sullivan?

A. I am assistant manager, assistant passenger sales manager for the Soo Line Railroad.

Q. Where is your office?

A. Room 1601, First National Soo Line Building, Minneapolis, Minnesota. Minneapolis 2, Minnesota.

Q. Now where is your residence?

A. 4315 Bryant South.

Q. Minneapolis, Minnesota?

A. Minneapolis, Minnesota.

Q. And that is your permanent home?

472 A. Yes.

Q. What was your position in 1955?

A. Different title, same position, assistant general passenger agent.

Q. How long have you had the same position? I will omit discussion of the title, but have you had roughly the same duties?

A. April 1st, 1952.

Q. And would you summarize the duties which you have had since April 1st, 1952?

A. Assistant in the direction of the passenger department.

Q. And to whom do you report?

A. R. F. Berndt, passenger sales manager.

Q. Do you have an assistant directly under your supervision, or do you have a group of people that are subject to your supervision?

A. There is a group of people who work in the office.

Q. From time to time since April 1st, 1952, have you attended meetings of the Chicago Terminal Lines?

A. Yes.

Q. Has it been part of your duty to represent the Soo Line Railroad at such meetings?

A. Yes.

Q. Have other employees of the Soo Line attended 473 such meetings since April 1st, 1952?

A. Yes.

Q. Who else?

A. T. J. Nolan, city passenger agent, Chicago.

Q. Is he the only one?

A. The boss may have gone to one or two, I don't know.

Q. The boss is Mr. Berndt?

A. Mr. Berndt may have gone. I don't recollect that he did.

Q. When Nolan went, did he go as your substitute or as your assistant?

A. He went to represent the Soo Line.

Q. Would he go when you were not present?

A. Yes.

Q. How often did that happen?

A. Oh, I would say roughly two or three times. It is hard to guess.

Q. About how many times did you attend such meetings, just roughly? I don't hold you to any specific number.

A. Frankly, I don't know.

Q. Well, was it more than two or three?

A. Oh, I would say five or six.

474 Q. Were you the regular representative of the Soo Line at such meetings?

A. Yes, I would say I was. There were times it wasn't convenient for me to go.

Q. Then Mr. Nolan attended?

A. Mr. Nolan attended.

Q. And possibly Mr. Berndt did?

A. Yes.

Q. Did you attend any meeting during the period since April 1st. 1952, at which the subject of transfer of passengers and baggage among stations in Chicago was under discussion?

A. Yes.

Q. Do you know if either of these other two gentlemen attended such meetings?

A. I believe Nolan did.

Q. Do you happen to know which such meetings he attended?

A. No, I don't recollect.

Q. Do you know if it was during 1955?

A. I am not sure.

Q. Have you brought with you some papers pursuant to the subpoena which was served on you?

A. Yes.

475 Q. I wonder if we can look at those and perhaps we could establish from those papers who attended what meeting.

Would it be possible for you, Mr. Sullivan, by looking at your own file to determine what meetings during 1955 concerning the transfer of passengers and baggage, that is, meetings of the Chicago Terminal Lines, were attended by any representative of the Soo Line?

A. Did you say in 1955?

Q. Yes.

A. Do you want me to call the office from here?

Q. Yes. Are you going to answer that merely by looking at the circular that the committee itself promulgated is that it?

A. This is the first one I ran into.

Q. Yes, call the office.

A. What do you want, the date of the meeting or—

Q. The date of the meeting and the representatives of the Sou Line.

A. September 14, 1955.

Q. Who attended that?

A. P. H. Sullivan. Do you care about the ones we didn't attend?

476 Q. Well, I really just want to—all I am trying to do is to find out who on behalf of the Soo Line was at the meetings during the year, and I would like to know which ones you attended or Mr. Nolan or Mr. Berndt.

A. September 9, 1955, T. J. Nolan. I think that does it.

Q. Did you ever prepare any memoranda of meetings, memoranda of what went on at any meetings during 1955?

A. Yes..

Q. Didn't you attend a meeting on February 1st, 1955?

A. Evidently.

Q. I would like to see the original of the memorandum that you prepared with regard to that meeting, if you have it."

And the witness handed a document to the examiner.

"Q. Do you have other memoranda which you prepared of meetings which you attended, including other memoranda of this meeting, if you have any?

A. Those are handwritten notes of which you have a copy."

Then there is some colloquy between counsel.

The next question was:

477 "Q. Mr. Sullivan, have you any other documents which are memoranda which you prepared of meetings of the Chicago Terminal Lines or have you handed me all that you have?

A. I will have to go through the files and see. What period of time are you talking about?

Q. Well, all of my questions have been directed at 1955."

Then there was further colloquy between counsel and the witness said:

"A. Here is one dated September 19, 1955.

Q. And that is a memorandum which you prepared, I take it?

A. That is right.

Q. Is this memorandum of September 19, 1955, among the documents which you voluntarily disclosed to Parmelee?

A. Yes. Do you want me to find out if there is any more more in there?

Q. We will stay with these for now."

That document was marked for identification Sullivan Exhibit 2.

"Q. I show you a document which has been marked Sullivan Exhibit 2 for identification, and ask you if
478 that is in your handwriting?

A. Yes.

Q. Can you tell me when you prepared it?

A. At a meeting of the Chicago Terminal Lines on Tuesday, February 1st, 1955.

Q. Were the penciled notations actually made while you were present at the meeting?

A. Yes.

Q. And you were attending that meeting as a representative of the Soo Line Railroad?

A. Yes.

Q. For what purpose did you make the penciled notations on Sullivan Exhibit 1 for identification?

A. For the purpose of making a report to my superior when I returned.

Q. And did you subsequently make a report to your superior?

A. I did.

Q. Was that report reduced to writing?

A. It was.

479 Q. And is the document which is dated February 3rd, 1955, which has been previously marked as Soo-2, being a typewritten document on a yellow piece of paper, the original of that document?

A. Yes.

Q. Now was this report delivered to your superior at the Soo Line Railroad?

A. Yes.

Q. Do you know if any action was taken on it?

A. I don't understand what you mean by action.

Q. Well, what happened to the document ultimately, if you know? Was it placed in the permanent files of the railroad or what was done?

A. My superior read it and it was placed in the file.

Q. Is that the only record prepared by a representative of the Soo Line Railroad of what transpired at that meeting, if you know, to the best of your knowledge? And I don't mean—I mean, of course, to except the penciled note that went with it.

A. So far as I know that was the only record prepared by a Soo Line representative.

Q. And as far as you know, is that the only record maintained in the files of the Soo Line Railroad of 480 what transpired at that meeting?

A. I don't know.

Q. Mr. Sullivan, the penciled memorandum which has been identified as Sullivan Exhibit 2 for identification, does that contain notes of what was said at the meeting or notes of what you were thinking?"

By Mr. McConnell: The answer was: "I don't think the question has an answer."

By Mr. McConnell: (Reading)

"Q. What are the penciled notes, Mr. Sullivan? What were you making notes of?

A. I was making notes of various things that were said by various people at the meeting, also my reaction to them.

Q. Would you give me an example of your reaction to what was said?

A. After three years, that is rather difficult.

Q. Just so we can be sure we have the handwriting accurate, would you read me what the memorandum says

about the first line which goes all the way across the page?

A. Keeshin first—"

By Mr. Thompson: Just a moment, please. We object to readng any part of any memorandum. This Soo Line Railroad is not a defendant in this case. The witness 481 is not a defendant in this case. All the matter that he is reporting that he heard and saw and what have you is hearsay as to every defendant in this case.

We object to reading any memorandum.

By the Court: Is that correct, Mr. McConnell? Soo Line is not a defendant in this case?

By Mr. Thompson: No.

By Mr. McConnell: Soo Line is not a defendant, but the Soo Line was a member of the Terminal Association and attended these meetings.

By the Court: The objection will be sustained.

By Mr. McConnell: I haven't finished my statement, if the Court please.

By the Court: I am sorry. I thought you had.

By Mr. Thompson: There is no Terminal Lines Association.

By Mr. McConnell: Here is a man who went to a meeting at which representatives from the defendant railroads were present. He wasn't the only one at the 482 meeting. The defendants were there too. He is testifying under oath with them present to cross examine him.

By the Court: He is testifying to his own personal memorandum.

By Mr. McConnell: No, he is testifying now as to what the defendants and the other people did and said and what the activity was at the meeting.

By the Court: I understand, but the way to prove that is by testifying that the meeting was held, who was present, what was said, and who said it; not by a personal memo of what he recorded afterwards.

By Mr. McConnell: He didn't record it afterwards. He recorded it at the time.

Now we have shown that he doesn't have independent recollection of what was said at the time, and he is reporting from the memorandum which he made at the time, and he was there and these defendants were there.

This isn't hearsay at all. This is testimony of what occurred at a meeting at which they were present.

483 By the Court: May I see that, please?

By Mr. Thompson: If the Court please, there is no evidence that any defendant was present at this meeting.

By Mr. McConnell: It was the Terminal Association made up of 21 railroads which were involved in this lawsuit.

By Mr. Thompson: Your Honor asked for the memorandum. I suppose the first one he is referring to is the penciled notation.

By Mr. McConnell: Can we reserve the ruling until we get the foundation in? I haven't offered it in evidence. If he doesn't want me to read it—

By the Court: If you want to reserve reading it until after you have laid the foundation?

By Mr. McConnell: All right, we will do that.

By the Court: Fine.

By Mr. McConnell: I won't read anything from the document at this time.

By the Court: All right.

By Mr. McConnell: (Reading)

"Q. Do you recall whether there was a discussion 484 which led you to make those particular notations?

A. Yes.

Q. To the best of your recollection, will you tell me what that discussion was?

A. The gist of it is in the notes.

Q. Can you tell me who participated in the discussion?

A. No, I can't.

Q. Can you recall anything about the discussion except what is in the notes?

A. No, I can't.

Q. Would that be true of all the notes on the memorandum, Mr. Sullivan?

A. Let me get that question correctly. What is it you want to know now?

Q. Do you have any independent recollection of what was said at that meeting which goes beyond what these notes reveal?

A. No.

485 Q. Before coming here, Mr. Sullivan, did you read through these documents so you have had a chance to try to refresh your recollection and still will say no, I assume?

A. Yes, I read through them.

Q. And after reading through these documents, you do not recall anything that was said at this meeting that is not revealed in these memoranda, is that correct?

A. That is correct.

Q. The only reason I am asking is, I don't want to take the time and ask you a lot of questions if you say this is all you can recall about it. Do you see toward the middle of the memorandum the word 'Parmelee' in your handwriting?

A. Yes."

By Mr. McConnell: Now, he wants him to read that entry, and I will leave the entry alone until we get through reading what he said about how he did it.

By Mr. McConnell: (Reading)

"Q. Do you recall, Mr. Sullivan, if there was discus-

sion at that meeting by other members of the committee, subcommittee of six railroads . . ."

486 By Mr. McConnell: If I may interpolate a moment, the six railroads are the six defendant railroads in this case.

(Continuing reading):

". . . by persons on that subcommittee, not including Mr. Padrick?

A. At this late date it is hard to recall who said what.

Q. Do you recall whether other people made comments besides Mr. Padrick?

A. At a general meeting everybody makes comments.

Q. I am not going to try to ask you just exactly who said what, because obviously you couldn't remember, but would it be true, Mr. Sullivan, that there was general discussion of the subject matter of the meeting by the persons present?

A. By all the persons present, yes.

Q. Did you participate in the discussion?

A. I don't recollect; if at all, in a minor way.

Q. I just want to be sure the record isn't incorrect because of inadvertence of either of us.

Did anyone from the Soo Line Railroad attend the meeting of June 13, 1957? I think up to now the

487 indication is that no one did, and I want to be sure that is right." That should be 1955.

(Continuing reading):

"A. I don't recall.

Q. Would you be able to tell by looking at the file?

A. We don't seem to have any record in that file of that particular meeting.

Q. So as far as your recollection is concerned and as far as the file of the Soo Line Railroad is concerned, it would appear that no representative of the Soo Line attended that meeting, is that correct?"

By Mr. McConnell: And the further question:

"Q. Well, Mr. Sullivan, do you recall whether you or any other representative of the Soo Line attended that meeting?

A. I don't recall clearly. I think I may have been there, but I am not sure."

By Mr. Thompson: We move to strike that answer as sheer speculation. He says he doesn't know, and if he doesn't know, that is the end of it.

By Mr. McConnell: He thinks he may have been there.

488 By Mr. Thompson: Of course, but that is no testimony that he was there, because he thinks he was there. This is the June 13 meeting of 1955, and he says he doesn't recall, and that ought to be the end of it. He can't guess whether he is there or not.

By the Court: I am mindful of it. Let's proceed.

By Mr. McConnell: (Continuing reading)

"Q. Is there any document which is responsive to the subpoena which has been served upon you to appear today which indicates the Soo Line was represented at that meeting?

A. Not that I know of.

Q. And would you just for the record indicate roughly how many documents you have brought here today? Don't try to count them, but it is a stack of so many inches high, or something of that nature."

By Mr. McConnell: And then there was colloquy with counsel, and there was an off-the-record discussion and the following question:

"Q. While we were off the record, Mr. Sullivan, did you examine the portion of the files which you pro-
489 duced this afternoon which covered the period during June of 1955?

A. Yes.

Q. And did you find in that part of the files anything to indicate that the Soo Line Railroad was represented at the June 13th meeting?"

By Mr. McConnell: And then he rephrased the question:

"Q. Did you find anything in there to indicate you were there, that is all, or anybody else from the Soo Line was there?

A. I found no record of any meeting on June 13, 1955.

Q. To the best of your information and belief, Mr. Sullivan, are these files complete?

A. To the best of my information and belief, yes, sir.

Q. Can you account for the fact that no record appears in the files of the Soo Line Railroad of any representative of that railroad attending that meeting?"

By Mr. Thompson: I object to that question as calling for a speculative answer.

By the Court: Objection sustained.

490 By Mr. McConnell: The next question is as follows:

By Mr. McConnell: (Reading)

"Q. I don't mean to question your record. I just mean was this a meeting of sufficient importance to the Soo Line Railroad that they would have felt that they should definitely have been represented at the meeting?

By Mr. Thompson: Same objection.

By the Court: Sustained.

By Mr. McConnell: He didn't answer it anyway.

The next question is:

By Mr. McConnell: (Reading)

"Q. Well, I don't think you have the privilege of deciding what questions you will answer and what you will not answer, Mr. Sullivan.

A. May I answer in my own way, then?

Q. Yes, you may.

A. Ordinarily when these things come in, they are given to the file clerk to file.

Q. I am not asking you about your files, Mr. Sullivan. I am satisfied your files —

A. You want to know why it isn't in there?

491 Q. I want to know why you may not have attended the meeting."

By Mr. Thompson: I object to that as speculative.

By Mr. McConnell: He said he didn't know.

By Mr. McConnell: (Reading)

"Q. Was the meeting of importance to the Soo Line Railroad?"

By Mr. Thompson: I object to that as asking for a conclusion of the witness.

By the Court: Sustained. How can he know if he wasn't there?

By Mr. McConnell: Well, he knew what the meeting was about, I think. It was about the transfer.

By the Court: Objection sustained.

By Mr. McConnell: (Reading)

"Q. Did you have any standing instructions with respect to these meetings?

A. No.

Q. What considerations influenced the decision of whether you would attend or not attend?"

By Mr. Thompson: We object to that as immaterial, calling for a conclusion.

By the Court: Objection sustained.

492 By Mr. McConnell: (Reading)

"Q. Did you get reports of what went on at these meetings from a representative of any other railroad at any time?"

By Mr. Thompson: I object to that.

By the Court: He may answer yes or no.

By Mr. McConnell: He says:

By Mr. McConnell: (Reading)

"A. Only from the Western Passenger Association, or rather, from the Chicago Terminal Lines Committee."

By Mr. Thompson: I move to strike that.

By the Court: I will let it stand.

By Mr. McConnell: (Reading)

"Q. Only through these mimeographed promulgations?

A. That is right.

Q. Did you have any oral discussions with any members of the committee of six railroads that was primarily charged with the duty of handling these negotiations?

A. Oral discussions concerning what?

Q. For example, if you missed a meeting, was there someone on the committee that you might call up and say, 'What happened?' or something of that nature?

A. I might have; I don't recollect.

Q. As far as you recall, you relied on what is in 493 the file, is that right?

A. That is right.

Q. In preparing such memorandum as you prepared, which would include this memorandum of the meeting of February 1, 1955, did you make a conscientious effort to prepare an unbiased report of what went on at that meeting?"

By Mr. Thompson: If the Court please, I think that is seeking to impeach their own witness and is an immaterial thing, what effort he made.

By Mr. McConnell: It is his foundation for whether or not he made it in the regular course of business.

By the Court: Proceed; it may stand.

By Mr. McConnell: (Reading)

"Q. You didn't hold any brief for any of the parties that were involved in this negotiation, did you?

A. I worked for the Soo Line. My reports were made to the Soo Line with that in mind.

Q. The purpose being to give them as accurate a report as you could of what went on at the meeting, is that right?

A. That is right.

494 Q. I certainly didn't intend to impeach you, Mr. Sullivan, just in case you were influenced by what Mr. Tone said. We previously obtained photostats of some other documents in the file of the Soo Line Railroad, and I will just show you a photostat of a document dated February 13, 1956 with a notation Soo-4 on it and ask you what that is, if you know.

A. That was a letter written in answer to one we wrote regarding operations of railroad transfer.

495 Q. And does the original of this letter appear in the files of the Soo Line Railroad?

A. Yes, sir.

Q. Who is Mr. Foster?

A. Manager of mail, baggage and express traffic of the Soo Line Railroad."

By Mr. McConnell: And then that document was marked for identification as Sullivan Exhibit No. 4.

(Continuing reading):

"Q. Mr. Sullivan, except for the fact that the documents are a couple of years older than when they were prepared, are Sullivan Exhibit 2 and Sullivan Exhibit 3 in the same condition as when you prepared them or had them prepared by your stenographer?

A. What do you mean by that question?

Q. What I mean is, has anything been erased from the document or added to the document after the time the document was first prepared, these two including the reference to Soo in the lower right-hand corner and the marks the court reporter made this afternoon?

A. Not to my knowledge.

Q. Do you recall anything which was said at any of these meetings about negotiations with the Railway
496 Express Agency?

A. Yes.

Q. What do you recall about such?"

By Mr. Thompson: I object to that as immaterial. The Railroad Express Agency is no part of this case.

By the Court: Read the question.

By Mr. Thompson: What would be said about it would be hearsay.

By the Court: I am asking him to repeat the question.

By Mr. McConnell: The question was:

"Q. Do you remember anything that was said . . ."

By the Court: By whom?

By Mr. McConnell: (Reading)

"Q. Do you recall anything which was said at any of these meetings about negotiations with the Railway Express Agency?"

And he said:

"A. Yes."

By the Court: Proceed.

By Mr. Thompson: The next question is the one I am objecting to.

By the Court: I will hear it.

497 By Mr. McConnell: (Continuing reading)

"Q. What do you recall about such?"

By Mr. Thompson: That, of course, is rank hearsay as to every defendant, and it is immaterial.

By the Court: Objection sustained.

By Mr. McConnell: There isn't any hearsay where the people are present.

By the Court: There is only one way of reporting a proceeding of a committee and that is as to what was said, who was present, when it was held and who said it.

By Mr. McConnell: If he can do that, all right, and if he can't, we are entitled to secondary evidence.

By the Court: I know of no shortcut to that rule.

By Mr. McConnell: (Continuing reading)

Cross Examination by Mr. Tone.

Q. You did not necessarily make a memorandum of every meeting you attended, did you, Mr. Sullivan?

A. No, sir."

By Mr. McConnell: That was all, and then there is redirect examination as follows:

498 "Q. Mr. Sullivan, were these memoranda about which we have talked this afternoon prepared for any personal use of yours? In other words, do you have any desire to use them in any capacity other than as a representative of the railroad?

A. They are prepared for company business.

Q. In the regular course of company business?

A. That is right.

Q. You certainly know what the company business was, don't you?

A. They were prepared for the record for company business purposes.

Q. In each instance, when you felt the subject matter merited a memo report to your superiors would you prepare a memorandum?

A. At times I reported verbally."

By Mr. Thompson: I object to that as calling for a conclusion.

By the Court: I will let it stand.

By Mr. Thompson: He didn't answer.

By Mr. McConnell: He did. He said, "At times I reported verbally."

By the Court: Proceed.

By Mr. McConnell: (Reading)

"Q. Did you ever attend any meetings where you
499 made no report?"

By Mr. McConnell: And then the question was rephrased:

"Q. After every meeting did you make either an oral or a written report?

A. Yes.

Q. Was it therefore your regular practice to make a regular report to some other representative of the railroad after each such meeting?

A. Yes.

Q. And this document which is marked Sullivan Exhibit No. 3, for identification, is one of these reports?

A. That was a memorandum for the file and also a report. Call it whatever you want. It wasn't addressed to anybody. I am trying to be specific. I am not trying to split hairs.

500 Q. I understand, but I think your answer would be yes there, that is one of those reports?

A. It would be a report, yes."

By Mr. McConnell: I want to offer with this deposition the documents which have been marked for identification.

By the Court: Are these the documents? Are these the same?

By Mr. McConnell: I want to offer Soo-1, Soo-2 and Soo-4.

By the Court: May I have them, please, again, all of them?

By Mr. Thompson: Just a minute, please.

By Mr. McConnell: It is Soo-2, -3 and -4 that they are marked.

By Mr. Thompson: I suppose you are referring to what, the index number down here?

By Mr. McConnell: All right, Sullivan Exhibits 2, 3 and 4, the three documents attached.

By Mr. Thompson: They are marked two different ways. You are now referring to Sullivan Exhibit No. 2, for identification, which is the handwritten memorandum.

By Mr. McConnell: And then there is Sullivan Exhibit No. 3 and Sullivan Exhibit No. 4.

501 By the Court: Gentlemen, I can't read that even with my glasses.

By Mr. Thompson: Sullivan Exhibit No. 3 is the—

By the Court: Would you tell me what this one is marked No. 2? What is it?

By Mr. McConnell: That is the memorandum where he has been talking about the meeting.

By the Court: Objection sustained.

By Mr. Thompson: And this here is his written report a couple of days later.

By Mr. McConnell: Before we get to sustaining these objections, can I be heard on this?

By the Court: Certainly, you may be heard at any time.

By Mr. McConnell: All right; let me state this:

By the Court: May I see the third one, please, the other one?

By Mr. Thompson: This is Sullivan Exhibit No. 3, for identification.

By the Court: All right; you may be heard, Mr. McConnell.

By Mr. McConnell: Are you through talking now, Judge Thompson, and may I address the Court?

By Mr. Meserow: I have not made my objection, but go ahead.

502 By Mr. McConnell: I am going to try to sustain the admissibility of these documents, if I may.

By the Court: I will hear you.

By Mr. McConnell: All right.

I want to call the Court's attention to 28 U.S. Code anotated, Section 1732, which provides for the admissibility in evidence of any document as against the world, not as against the party who made it but as against everybody, under what we used to call the old bookkeeping exception to the hearsay rule. That was the common law exception to it, but now it has been codified by statute in the federal courts, and it says, and I am quoting from the statute:

> "A writing made as a record, an act, a transaction, occurrence or event made in the regular course of business is admissible."

I want to cite in support of that rule a decision in 1943 of the Circuit Court of Appeals for the Third Circuit in the case of Pollack against Metropolitan Life Insurance Company, 138 Fed. 2nd., 123, and I also want to cite—

Well, that case holds that a third person who wasn't a party to the suit, who had no interest in the suit at all,

and this is a party who is not a defendant to the
503 suit, where the record was made there in the regular course of business, that it was binding against everybody, the whole world, that it was not hearsay but was a well defined exception to the hearsay rule.

In the case, a recent case in 1956 in the Court of Appeals for the Second Circuit, in the case of Smith against Baird, it was held that it was reversible error to exclude, under the Federal Statute, memoranda prepared by a non-party banker as to what transpired at a luncheon meeting he had with defendants, where he reported and

made notes and memorandum of what was said.

504 Here we have a report made, and I am not going to describe it. The Court can look at it, but it speaks

for itself as to this man's reporting as to what took place and what the concensus of opinion was of the people who were there dealing with the express problem here of who should have this transfer contract.

One of the issues of public convenience, it seems to me, or public injury, must be, and it must be one of the issues is as to whether or not the transfer service was changed over from some legitimate reason, better service or better rates or something of the kind, or whether it was changed over arbitrarily and against the concensus of opinion that it was no better than what was already being offered by the Parmelee Company.

Certainly, that is squarely within this issue. It isn't a conspiracy issue. It is squarely within the issue that your Honor has undertaken to try, and here is a meeting, a concensus of which is defendants take the position that Parmelee should have the contract and so report in ordinary due course of business, and that is what it is offered for, and I have laid the foundation that he did have no personal interest in it at all, that he was doing it in
505 the regular course of business, that he was making a report to his superiors of what he heard, of what took place, what transpired at this meeting of this group of railroads who are parties to this contract.

It seems to me it is clearly admissible under the bookkeeping exception to the hearsay rule.

By the Court: The objection will be sustained, and they may be excluded. There is a statement by someone, not a party, to someone who is not a party by that someone who doesn't even know who was present who doesn't know who was present or what was said and who said it. The objection will be sustained.

By Mr. Meserow: That is 2, 3 and 4.

By Mr. McConnell: How could he report like that? He says he was there and he gives a whole reporting of the meeting, your Honor.

By Mr. Keating: I object to Mr. McConnell continuing arguing with you, your Honor, in the presence of the jury.

By the Court: I will take care of myself, Counsel; don't worry.

By Mr. McConnell: We will have them marked here for identification.

By the Court: I thought they had been marked. They are attached to the exhibit. They may have been
506 identified and marked.

By Mr. McConnell: I will ask that the court reporter mark this first document as Plaintiff's Exhibit No. 11, for identification, the second document as Plaintiff's Exhibit No. 12, for identification, and the third document as Plaintiff's Exhibit No. 13, for identification.

(And thereupon said documents were marked Plaintiff's Exhibits 11, 12 and 13 for identification.)

By Mr. McConnell: And I reoffer these documents, if the Court please, as they have now been marked as Plaintiff's Exhibits 11, 12 and 13, for identification.

By Mr. Thompson: We move to strike all the testimony of Mr. Sullivan as immaterial to any issue in this case.

By the Court: The offer will be refused, and the documents will be rejected, and the transcript testimony will not be stricken.

By Mr. Freeman: In attempting to proceed with some efficiency, I thought I would read the deposition of Mr. Howard E. Simpson, who is the president of the Baltimore and Ohio Railroad. He was the president in 1955. He still is. He is located in Baltimore.

If this trial had taken a different trend we would have called him personally, and he would have been pro-
507 duced, but I think we can proceed with this and save him some inconvenience by reading his deposition.

This was a deposition taken of Mr. Howard E. Simpson under Rule 30 of the Federal Rules of Civil Procedure, in Baltimore at his offices on February 11, 1957, before Paul Dwyer, a notary public in Maryland.

"HOWARD E. SIMPSON was first duly sworn and was examined as follows:

Direct Examination by Mr. Stevens.

Q. Mr. Simpson, state your name, please.

A. Howard E. Simpson.

Q. And your occupation?

A. President, Baltimore and Ohio Railroad.

508 Q. And how long have you held that position?

A. Since September 1, 1953.

Q. Are you also a director of the Baltimore and Ohio?

A. Under our by-laws I am not a director, although I have the privilege of voting in case of a tie. Our charter calls for a president and 12 directors.

Q. You do attend directors' meetings, though, I take it?

A. I do.

Q. And you are a defendant in this case?

A. That is true.

Q. Have you read the complaint?

A. Yes.

Q. Have you read the answer which was filed on your behalf?

A. The two affidavits that I filed?

Q. No, I mean the answer filed on behalf of the Baltimore and Ohio Railroad and yourself as defendants in this cause.

A. Yes.

Q. Would you identify for me the two affidavits that you just referred to?

A. One was dated November 11, 1955 and the other was December 6, 1955.

Q. Referring to the December 6 affidavit, for whom 509 was that prepared?

A. Howard E. Simpson.

Q. No, I mean for whom was it prepared? I mean what use did you make of that affidavit?

A. —"

By Mr. Thompson: Now, if the Court please. Just a minute. We object to the question as immaterial and calling for an answer which your Honor already excluded by pre-trial rulings.

By the Court: Will you read the question, please, Mr. Freeman, again, and the answer?

By Mr. Freeman: Yes, and I would like to talk about the pre-trial rulings for a moment.

The question was: "For whom was the affidavit prepared? I mean, what use did you make of that affidavit?"

Then the objetcion was made. Now with respect to your Honor's pre-trial rulings, a memorandum was entered with respect to certain documents that were numbered and described in various motions but not submitted to your Honor.

In the course of argument on that memorandum, 510 you did make certain statements limiting the effect of that memorandum, and then in an order that you entered on March 10, 1960, you said, "It is hereby ordered that the rulings made in the memorandum dated December 4, 1959 in so far as they are not specifically changed by the Court's statements hereinabove—"

And I assume that means in the discussion on January 6.

> ". . shall stand and shall govern the tender of the subject documents at the trial of this cause, and the said memorandum together with this shall be filed and entered instanter as an order of this Court."

Now, among the statements that were made by your Honor, very clearly and very specifically pursuant to my discussion with you here on January 6th, was that any document that was an admission against interest of one of the defendants would clearly be admissible and you would receive it, and to that extent you would modify your memorandum.

By the Court: I still so hold.

511 By Mr. Freeman: And these affidavits are affidavits of a defendant, Howard E. Simpson, and they are being offered, as soon as I identify them, as admissions against interest of Mr. Simpson.

By Mr. Thompson: We ask the Court to examine the documents, and he will find that they are not admissions against interest, and they do come clearly within the rulings of excluded documents, without any question.

By Mr. Freeman: There is no such legal ruling. If what Mr. Thompson means is the mistaken ruling—

By The Court: May I see them, please?

By Mr. Freeman: Yes.

By The Court: The objection will be sustained to these documents, not on the theory that they are inadmissible under my ruling. They will be admissible if and when we get to the issue of the conspiracy, but they have no bearing on this issue and are excluded.

By Mr. Freeman: I was trying to identify—

By Mr. McConnell: Have you marked them?

By Mr. Freeman: I will mark them in a minute, Mr. McConnell. The question was—

512 By The Court: By these documents I mean the two affidavits dealing with Hugh Cross.

By Mr. Freeman: Yes, but the question that was presented to which an objection was made was, for what purpose were these affidavits prepared, and I think I am

entitled to at least lay the groundwork for the exclusion that you are ultimately making.

By Mr. Thompson: I will show your Honor the answer that was made, which of course is clearly—

By The Court: They speak for themselves. Objection will be sustained.

By Mr. Freeman: All right. Then I will leave out the few questions and answers.

Let me mark them now. I would like to have marked as Plaintiff's Exhibit 14 for identification this affidavit of Mr. Howard E. Simpson, executed November 11, 1955, and as Plaintiff's Exhibit 15, this affidavit of Mr. Howard E. Simpson, executed on December 6, 1955.

(Said documents were marked, respectively, as Plaintiff's Exhibits 14 and 15 for identificattion.)

513 By Mr. Freeman: I will later, in accordance with out truncated procedure, make an offer of proof of these documents that have been rejected.

Then I read further on page 4:

514 "Q. Mr. Simpson, during the last few days, have you had an opportunity to refresh your recollection as to the events during 1955 pertaining to this transfer situation in Chicago?

A. I did, to the best of my recollection, turn over in my memory what transpired.

Q. So if I refer to, say, the May 19th meeting or the June 3rd meeting, would you know what I was talking about?

A. I would. You mean based on Mr. Cross' calls to me?

Q. Well, specifically, I had in mind the meeting of the Committee of Six Railroads in Chicago. Did you make any attempt to review the activities of that committee at all?

A. Only based on verbal reports that were given me by our representatives who attended those meetings.

Q. I mean, during the last few days, have you made—

A. No.

Q. Any effort to review what that committee did?

A. I have not.

Q. Did you review the transcript of Mr. Cross' testimony before the Senate?

A. I did not."

By Mr. Meserow: I object to the question and
515 the answer, if the Court please, as not being material to the issue involved in this case.

By The Court: Objection sustained. The answer may be stricken.

By Mr. Freeman: Well, the next question I assume would fall in the same category:

"Q. Or his deposition in this cause.

A. I did not.

Q. You did review your affidavits, however?

A. That is all.

Q. Did you also review your diary which I think you have with you today?

A. Yes, we checked over some of those dates. I don't think we ought to refer to that as a diary, Mr. Stevens. That is just a memorandum of appointments. It is not one hundred percent accurate as to all the appointments I may have had on any specific date.

Q. Is there another document which is more accurate?

A. No, that is just the office memorandum to keep me up to date on advance appointments.

Q. Mr. Simpson, are you familiar with the fact that prior to June 15, 1955, Mr. Nelson of your Chicago office regularly prepared reports on the meetings of
516 the committee of six railroads in connection with the transfer situation?

A. I would have no direct knowledge of it because that is an interdepartmental memorandum between the traffic people, and they had full authority to proceed with any negotiations that were going on in connection with the transfer of passengers and baggage in Chicago.

Q. Would it true that such memoranda as Mr. Nelson did prepare, and I believe over Mr. Coleman's name, those were not seen by you?

A. They were not.

Q. And in the normal course of events, they would not be routed across your desk?

A. Exactly not.

Q. So that it would be true that to the best of your recollection, you did not see any of those memoranda prepared by Mr. Nelson prior to June 15?

A. That is a correct statement, or after June 15.

Q. Mr. Simpson, have you seen the original of a document dated April 11, 1955, which has previously been identified as Nelson Exhibit 6 for identification, and which I will now hand you?"

By Mr. Freeman: I would like to have this docu-
517 ment marked for the purpose of identification as Plaintiff's Exhibit 16. It consists of a four-page document coded as B&O No. 63 to 66, dated April 11, 1955, from Mr. Phipps, Jr., to Mr. H. E. Simpson, subject Parmelee transfer at Chicago.

(Thereupon said document was marked Plaintiff's Exhibit 16 for identification.)

By Mr. Freeman: I will proceed with the deposition, and then offer it:

"Mr. Stevens: May I have the original of that, please?"

By Mr. Freeman: Then there was a discussion off the record.

(Continuing reading):

"The Witness: Yes, I have a recollection of reading that memorandum.

Mr. Stevens: Now I would like your counsel to give us the original of that item, please."

By Mr. Freeman: Then Mr. Walker, representing the B&O Railroad said:

"Mr. Walker: We can't find the original. After Mr. Simpson noted that, it went back upstairs to Mr. Whittington's office. Where it went from there, we don't know, or where Mr. Whittington's file clerk put it, we don't know.

518 The Witness: See, when I get an original of that kind from Mr. Phipps, head of the traffic department, I read it, note it 'H.E.S..', and back it goes to the original sender.

By Mr. Stevens:

Q. Do you normally put the date on that you note it?

A. Yes. It is usually anywhere from three hours to seventy-two hours later, whether I am in Baltimore or whether I am out on the road.

519 Q. Do you know if you read this document from three hours to 72 hours after it was sent to you?

A. Yes, sometime in that period.

Q. So you would say you read this document sometime between April 11 and April 14?

A. Correct.

Q. Mr. Simpson, I believe your counsel accepted the service of a subpoena on your behalf which would call for the original of this document among others. Now may I ask you—you may ask your counsel, of course, if necessary—whether an effort was made to locate the original of this document?"

By Mr. Freeman: His counsel added: "An effort was made."

By Mr. Freeman: (Reading)

"Q. And is it in the file of the Baltimore and Ohio Railroad, to the best of your knowledge?

A. I couldn't say to the best of my knowledge where it would be. After I note it and it leaves my desk, it may pass through half a dozen hands. What would happen then, I don't know.

Q. You don't know what the normal ultimate destination of a document such as this would be?

A. I do not.

Q. It would not be maintained in the file in your
520 office?

A. Well, if it was there, I suggested to our counsel, Mr. Walker, when he came down and asked for my files in the president's office in connection with the transfer matter, to see our chief clerk and secure all the information and data we had in the president's office.

Q. Was there a file maintained in the president's office in connection with the transfer matter in general?

A. The only file that we have is the one we just turned over to Mr. Freeman. See, memorandums of this kind, when they come in, after I see them, and get the gist of what is in them and get all the satisfactory information I want out of it, why, I just note it and return it because there is nothing conclusive about it. It is just a memorandum of information and progress.

Q. Did you give this document to Mr. Cross?

A. I did not. Emphatically not.

Q. Did you show it to Mr. Cross?

A. I did not; emphatically not.

Q. But it has been mislaid apparently?

A. Apparently, if they can't locate it.

Q. Other than this file which you have handed to
521 Mr. Freeman, and we will identify some of the papers later, is it correct that there was no file in the presi-

dent's office pertaining to the transfer matter?

A. That is correct.

Q. Mr. Simpson, who if anyone in the B&O organization kept you informed on the details of the negotiations in Chicago pertaining to the transfer matter during 1955?

A. Why, generally Mr. Whittington, who in turn reports to Mr. Phipps, and most of the information along those lines was a verbal discussion with Mr. Whittington, either over the intercommunication box or on the road.

Q. Did you have any such verbal discussions with Mr. Phipps?

A. Yes, because he is the superior officer of Mr. Whittington but has little or no knowledge of passenger matters, and if I wanted to get the real pertinent facts about the transfer case, I would talk to the general passenger traffic manager, Mr. Whittington.

Q. Other than this letter of April 11, 1955, which is prepared over the signature of Mr. Phipps, did you receive any written reports from Mr. Phipps to the best of your recollection?

A. No, not that I recall other than that.

522 Q. Do you recall any specific oral report which Mr. Phipps made to you on the details of the transfer negotiations?"

By Mr. Freeman: The question is repeated, and then the answer:

By Mr. Freeman: (Reading)

"A. No, I do not. I think that there was another report, Mr. Stevens, after that April 11th one, sometime after the June 3rd meeting.

Q. Did you receive any oral reports from Mr. Whittington prior to the time that you received this April 11th memorandum in which Mr. Whittington described the details of the negotiations to you?

A. Mr. Whittington did discuss verbally with me the transfer situation in Chicago to the effect that the Keeshin or the Parmelee contract went out sometime in 1955, and the passenger committee was giving study to the further operations of passenger and baggage transfer through the City of Chicago.

Q. Do you recall where this statement was made by Mr. Whittington to you?

A. Oh, somewhere on the Baltimore and Ohio property. It could have been in the office or on the street or on the train.

523 Q. It wasn't in any formal session called for the specific purpose of discussing that subject matter?

A. None whatsoever because when matters of this kind are in the negotiating form, I don't receive a report until they are really down to the short strokes, and they are ready to make some kind of an arrangement.

Q. Did you also talk to him on occasion over the communication box on this subject?

A. Well, I could have, but I don't remember any specific conversations.

Q. Did you request Mr. Whittington to prepare or to have someone on his staff prepare the report which is dated April 11, 1955?

A. I personally asked Whittington to bring me up to date on the transfer of passengers and baggage through Chicago which was the April 11th letter.

Q. And prior to that time you had not been reading Mr. Nelson's reports, I take it?

A. I had not.

Q. So that this would be the first report which you had had on the details of the negotiations?

A. It was.

Q. Have you seen Mr. Cross since he resigned his position with the Commission?

524 A. I have not.

Q. Have you talked to him since then?

A. I have not. The only time I saw Mr. Cross was on April 23, 1955 to date.

Q. My question just related to since he resigned.

A. Well, that was away back in October or November.

Q. When you did see Mr. Cross prior to his resignation, how did you address him?

A. Prior to his resignation, Commissioner.

Q. You didn't call him by his first name?

A. No, I didn't know him personally or intimately."

525 By Mr. Thompson: We object to all this as immaterial to the issue before the Court.

By the Court: Objection sustained on the general ground that it hasn't any bearing on the issue.

By Mr. Freeman: (Continuing reading)

"Q. Do you recall when you first met him?

A. Oh, I imagine when he first went on the Commission."

By Mr. Thompson: The next number of questions are all along the same line.

By Mr. Freeman: I assume the same ruling would apply.

By the Court: The same ruling all along the line.

By Mr. Freeman: The answer:

"A. Oh, I imagine when he first went on the Commission, whenever that was, 1949 or 1950, just like we meet all the newly appointed commissioners. We make it a practice to go in and pay a courtesy call.

Q. But in any event, you didn't know him before he was on the commission?

A. I did not, no."

By Mr. Thompson: All this is the same thing.
526 There is no use reading matter that the Court has ruled improper.

By the Court: The same ruling.

By Mr. Freeman: I am going to leave some material, but not on Mr. Thompson's suggestion—

By Mr. McConnell: I think you should read it and let the Court rule.

By Mr. Freeman: (Continuing reading)

"Q. Are you a director of the Association of American Railroads?

A. I am, since 1953; better put that in there.

Q. I was going to ask how long you had been a director.

A. September 1953.

Q. When did the Association regularly meet, that is the board of directors of the Association?

A. The last Friday in the month with the exception of the month of July, I think it is, July or August, when they turn out for vacations.

Q. Do they normally meet in Washington?

A. They do.

Q. Did you attend the meeting of the board of directors of the AAR on Friday, May 27, 1955?"

527 By Mr. Meserow: I am going to object to these questions, your Honor, as not being material to the public injury at all, about the Association of American Railroads meeting.

By the Court: I don't know.

By Mr. Meserow: I was at the deposition. I know what is coming.

By the Court: I will reserve my ruling.

By Mr. Freeman: (Continuing reading)

"A. The only way I could find out is one of these

books," and then he looked at one of the books and said, "Yes."

Q. Do you recall if after that meeting you called on any Commissioner of the Interstate Commerce Commission?

A. No, I did not. I came right back to Baltimore on the 1:30 train to get ready to leave for White Sulphur Springs that night.

Q. Did you attend a meeting of the board of directors of AAR in April, I believe April 28th—April 29, I am sorry.

A. Yes, I did.

Q. Did you call on any members of the Interstate Commerce Commission after that meeting?

528 A. No.

Q. Did you attend the meeting of March 25, 1955?

A. No, I was in Florida.

Q. Mr. Simpson, have you on occasion since you have been president of the Baltimore and Ohio Railroad attended formal sessions of the Interstate Commerce Commission, and I intend to include formal conferences or actual hearings, any formal matters before the Commission in Washington?

A. Well, that is a very odd question. What do you mean by formal?

Q. Well, have you ever testified in Washington before the Interstate Commerce Commission?

A. Yes, but they aren't formal meetings. They are public hearings.

Q. I did not mean to exclude public hearings.

A. Oh, yes, I have testified for the Commission in ex parte freight rate cases.

Q. Have you also participated in conferences with commissioners at which the Baltimore and Ohio was

represented by an attorney, an attorney or attorneys, and the Commission was represented by attorneys?

A. Yes, I have.

Q. Did you attend such a conference in 1955 in
529 connection with the financing that the Baltimore and Ohio was undertaking?"

By Mr. Meserow: I object to the question and answer as not being material.

By The Court: Objection sustained.

By Mr. Freeman: I will read it subject to the objection:

"A. Yes, we discussed the refinancing program with the Commission"—

By Mr. Thompson: If the Court please, we object to the question and it is sustained, and that ought to take out the answer.

By the Court: Any appearances of any railroad before the Interstate Commerce Commission in any other matter except the question involved here is definitely excluded because it is part of the conspiracy and hasn't any bearing on this issue.

By Mr. Freeman: I am just trying to complete—

By Mr. Thompson: I know what you are trying to do.

By Mr. Freeman: To complete my reading subject to your objection, your Honor.

530 By Mr. Owens: Your Honor, let him read the questions, and when we make the objections, he should not read the answer then, just as though the witness were on the stand and not permitted to answer.

By Mr. Freeman: You have so many instructors.

By The Court: Yes.

By Mr. Freeman: Your Honor, just to change the pace a little, we had marked for the purpose of identification as Plaintiff's Exhibit 16 this four-page memo-

randum of April 11, 1955, which I think your Honor will find upon reading has to do with the very issue that you have in mind, and we would like to offer it in evidence.

531 By Mr. Thompson: I am generally familiar with the document, your Honor, but I just want to glance at it to refresh my recollection.

By Mr. Meserow: I haven't seen it, your Honor, but I am going to object on behalf of my clients as not being binding on them. This is hearsay as to them, and I don't believe it has anything to do with public injury, and therefore it is beyond the issues on trial.

By The Court: I will let Judge Thompson look at it, and let him make his objection.

By Mr. Thompson: Well, I am inclined to think that it is properly receivable in evidence as to the Baltimore and Ohio Railroad.

By the Court: That is how I feel about it. It goes to the negotiations with Parmelee and their proposal, and has a bearing or may have a bearing or could have a bearing on the issue involved.

By Mr. Thompson: So far as the Baltimore and Ohio is concerned?

532 By The Court: That is right.

By Mr. Freeman: Mr. Thompson has left me breathless. That is a shocking statement that he is willing to admit.

By Mr. Thompson: What is shocking?

By Mr. Freeman: I would like to read to the jury portions of this Plaintiff's Exhibit No. 16.

By The Court: As to the admissibility, Judge Thompson, if you didn't hear it.

He wanted to know what was shocking.

By Mr. Thompson: Your Honor, I didn't want to shock anybody.

By Mr. Freeman: That is dated April 11, 1955, addressed to Mr. H. E. Simpson I will not read the entire memorandum—

By Mr. Meserow: Who wrote the memorandum?

By Mr. Freeman: I don't think counsel should be constantly carrying on a colloquy with me. If he has an objection, make it to the Court.

(Continuing reading):

"Your inquiry of Mr. Whittington concerning the status of the Parmelee transfer of passengers and baggage
533 at Chicago.

In 1942 the 75 cents charge of Parmelee for transfer of passengers and baggage at Chicago was increased to 85 cents, and after the war the charge was successively increased to $1.00, $1.12, $1.20, and on January 1 this year to $1.22. In fact, each time Parmelee commenced wage negotiations with their employees they have also begun negotiations with the railroads for an increase in the charge. Another factor has been the decline in volume of traffic in recent years and the inability of Parmelee to make commensurate reductions in their expenses.

The general question of the cost of transferring passengers and baggage between stations at Chicago has been under almost constant survey by the committee of Terminal Lines in an effort to see what could be done to reduce the cost to the railroads. These surveys have included not only detailed studies of the Parmelee service for both passengers and checked baggage, but also formal inquiry has been directed to all other companies in the Chicago area which could possibly perform either the passenge or the baggage transfer service, asking that they submit bids. The Gray Line, Chicago Transit
534 Company, Willett Coach Lines, Hertz and others have examined the passenger transfer, but have been

unable to come up with any proposal that would be attractive to the railroads.

In addition, the Railway Express Agency, the contract P&D"—

By Mr. Freeman: I suppose that means— well, I don't know what it means.

(Continuing reading):

"—P&D freight carriers and others have studied the baggage transfer, but none have submitted proposals which the railroads could consider. The only way the Railway Express Agency would handle the baggage would be on a cost plus basis.

The rail lines are transferred between stations at Chicago approximately one and a half million passengers annually. Checked baggage transferred totals about 90,000 pieces. The competitive nature of better than 90 percent of the traffic moving through Chicago has resulted in the railroads absorbing the transfer charge except in very few instances on nearby points of origin or destination. For our railroad our Parmelee bills are currently averaging about $5,000 a month, and this is slightly lower than in previous years, because of the gradual decline in traffic.

535 During the past year considerable study has been given to the possibility of generally adding the transfer into the through fare paid by the passenger, but because of the competitive situation, a majority of the lines refuse to do this. Another proposal was to exempt the more important competitive territory and add the charge elsewhere. In checking this we found that if we exempted points on the New York-Washington line, plus Pittsburgh, Akron and Youngstown, where we have competition, better than 90 percent of our traffic was from and to such points and the situation would be little different from that which now exists.

Another suggestion was to add a 50-cent terminal charge to all fares via Chicago to help —"

By Mr. Freeman: I will forget that paragraph.

536 By Mr. Freeman: (Reading)

"Our present understanding with Parmelee expires June 30, 1955. We do not now have a formal contract, but the understanding between Parmelee and the railroads are covered by correspondence only. However, Parmelee has now asked for a formal contract for five years with the charge to the railroads tied to increases in wages of Parmelee and decreases in volume of the traffic as indicated by the following items suggested by Parmelee for consideration by the railroads.

"1. That the railroads, by written agreement, will continue with our services until December, 1961.

"2. That commencing with July 1, 1956, an adjustment of the coupon of one cent for each increase or decrease of three cents per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

"3. That commencing with July 1, 1956, and yearly thereafter on July 1, the price of the coupon will be increased one cent for each one per cent decrease in the number of coupons received by Parmelee during the

537 base period, and the price of the coupon will be decreased one cent for each one per cent increase in the number of coupons received by Parmelee during the base period.

"4. That the basis for such computation should be established by the number of coupons received during the calendar year of 1954. In computing the total number of coupons the full fares shall be computed as one, and half fares computed as one-half, and the furloughees shall be computed eighty-five one hundred twentieth.

"5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate.

"6. That Parmelee will assume any increases in cost of labor between July 1, 1955 and June 30, 1956.

"7. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955 and June 30, 1956.

"8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955.

"9. That the charges for all other services will remain the same.

"The above proposal by Parmelee has not been 538 formally submitted to the Chicago Terminal Lines, but has been discussed with the Chicago sub-committee handling the transfer survey. The sub-committee, on which we are represented, has not made its report to the Terminal Lines.

"Parmelee now takes the position that much of this equipment is old and needs replacing with new and larger vehicles for transferring both passengers and baggage, and that only with new and more modern equipment is there any possibility of reducing the cost and providing the type of service the railroads insist on. They say they will be required to spend about $500,000 over a period from six months to a year and can only justify this expenditure if they have a five year contract with the railroads.

"Many of the rail lines will be reluctant to sign a long term contract in view of the various studies which are still made of this situation, and the divergent views of the lines as to what should be done. This will, of course, be considered after a full report of the sub-committee has been received. Our company, however, is in a position where, with no major western lines in Grand Central

Station, practically all of our traffic has to transfer
539 to and from other terminals. Our principal competitor, the Pennsylvania Railroad, is more fortunate in that the Chicago, Burlington & Quincy, Milwaukee, and the Northern Pacific coast service of the Great Northern operates from Union Station without transfer being necessary.

"One suggestion made from time to time is that we discontinue all passenger transfer and let the passengers use regular taxi cabs at their own expense, but arrange for separate transfer of checked baggage. The difficulty with this is that many of the transfers are for close connections, and during inclement weather taxi cab service just would not be available, while today Parmelee assumes responsibility for this service and generally does a good job.

"Considering our company's competitive situation, we generally feel a definite transfer arrangement of the type now effective is desirable, but we are currently awaiting the full report of the sub-committee, after which the entire situation will be considered by all the Terminal Lines."

540 Now I go on with Mr. Simpson's deposition, and I will omit some references to the Interstate Commerce Commission and various meetings that he had, as a matter of voluntary choice.

By Mr. Thompson: What page?

By Mr. Freeman: Just as soon as I find it, Mr. Thompson.

I will start at the top of Page 20, and the witness is talking about meetings with various members of the finance committee.

The question:

"Q. And Commissioner Cross also, is that correct?"

By Mr. Thompson: We object to that. That is rig[illegible]

on the point he said he wasn't going to read just a second ago. We object to any reference to the hearings before the Interstate Commerce Commission.

By the Court: Objection sustained.

By Mr. Freeman: May I read the questions and answers subject to the objection?

By Mr. Thompson: No.

By Mr. Meserow: I object to that.

By Mr. Freeman: Are they going to answer
541 you each time, Judge?

By Mr. Meserow: Your Honor, this is before the jury, and I object to it.

By the Court: I can't help how they do it.

By Mr. Freeman: I don't understand that.

By the Court: I am standing by the same issue that we have agreed on.

By Mr. McConnell: Your Honor, I don't want to stand silent in the face of that statement. We have agreed on it?

By Mr. Freeman: We haven't agreed to anything.

By Mr. McConnell: We haven't agreed on your Honor's ruling at any stage.

By the Court: No, you are not bound by any agreements on it, and the record shows it.

By Mr. McConnell: I am trying to make it show. I don't know whether I am succeeding.

By the Court: It shows all the objections and rulings.

542 By Mr. Freeman: I will start reading from the middle of Page 24:

"Q. Can you tell me approximately when it was that you became aware of Mr. Keeshin's existence through your freight people?

A. Oh, back in the early thirties — that 'early' ought to be mid-thirties, because I came to Baltimore in '36.

Q. Mr. Simpson, before you received this memorandum of April 11th over Mr. Phipps' name did you know that Keeshin was a bidder for the transfer service in Chicago?

A. I did not.

543 Q. Do you know when you first learned that he was a bidder for the transfer service?

A. Some time after that date.

Q. Do you know who told you that he was a bidder for the transfer service?

A. Mr. Whittington mentioned that the subcommittee on the Chicago lines was considering the Parmelee contract in all its phases, and at that particular time they thought they would ask for bids for other transfer people or other people who could provide the type of service that was being furnished, and if I recall correctly, he mentioned the names of some seventeen different companies, were being considered at one stage of the game.

Q. Was this before or after you received this memorandum of April 11th?

A. To the best of my recollection it was after the April 11 memorandum.

Q. In that conversation he didn't single out any one of the seventeen companies for particular discussion, is that correct?

A. Other than the fact that he thought a lot of them were in there just to get their names on the record, but that it would simmer down with people who were

544 financially strong enough to carry out such a service.

Q. In his first conversation with you, did Mr. Cross mention Mr. Keeshin's name?"

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Freeman: (Continuing reading):

"Q. Do you know whether the Baltimore and Ohio Railroad prior to 1955 had had any business dealings with John L. Keeshin or the Keeshin Freight Lines, Inc.?"

By Mr. Thompson: We object to that. That is certainly outside of any issue in this case if we were trying all of them. It is immaterial.

By the Court: Objection sustained.

By Mr. Freeman: We will cover this by offers of proof, I assume.

By Mr. Freeman: (Reading)

"Q. What information did you have about business relations between the B&O and Keeshin Freight Lines, Inc.?"

By Mr. Meserow: Same objection.

By the Court: I will let him answer.

545 By Mr. Freeman: (Reading)

"A. None.

Q. Didn't you even know about it in a general way?

A. No, not even in a general way. I just heard the name mentioned, that is all. You understand, I wasn't in the freight end of the business until 1946.

Q. Were you aware of the fact that the B&O had leased the terminal in Chicago to the Keeshin Freight Lines, Inc.?

A. Oh, I knew of that situation, yes, but the details of it I had nothing to do with.

Q. Did you know whether within the B&O Railroad organization that was considered a favorable business relationship or an unfavorable business relationship?

A. I have no opinion on that."

By Mr. Thompson: If the Court please, this all has nothing to do with this lawsuit, and we object to proceeding with that line of examination.

By Mr. Freeman: That is the end of that.

By the Court: I agree, but I can't anticipate a series of questions. Certainly, they may have some bearing as

to how he knew Keeshin, what he knew about him,
546 how he regarded him. I think it may have some propriety there.

By Mr. Thompson: He has already answered, your Honor, that he knows nothing about it.

By the Court: Proceed.

By Mr. McConnell: Your Honor, I think it has something to do on the question of public injury. If a man loses a contract by something extraneous to service, if he is thrown out because of some other influence which brought to bear, it certainly negatives any inference that the jury could draw that the reason the change was made was for the better service.

By the Court: That would make a nice argument before the jury, but it has nothing to do with any reading of the depositions.

By Mr. McConnell: Yes; he is trying to show by this evidence that the reason the Parmelee was thrown out was not because of service or anything else.

By the Court: I said it may have some bearing. I was with you on it.

By Mr. Thompson: It doesn't have anything to do with Parmelee. This is the B&O and Mr. Keeshin's
547 deal.

By Mr. Freeman: (Reading)

"Q. Do you know whether or not the B&O owned stock in the Keeshin Freight Lines, Inc.?

A. To the best of my knowledge, they did not."

By Mr. Thompson: "They never did."

By Mr. Freeman: (Reading)

"Q. Do you know whether they own serial notes issued by Keeshin Freight Lines, Inc.?"

By Mr. Freeman: What was that?

By Mr. Thompson: The answer was "They never did." Not "They did not."

By Mr. Freeman: Yes, "They never did."

By Mr. Freeman: (Reading)

"A. I do not.

Q. Do you know whether or not the B&O lost any money dealing with the Keeshin Freight Lines, Inc.?

A. I do not.

Q. Who in the B&O Railroad would know about such a matter?

A. Well, my predecessor, possibly, Mr. Shumate, would have known about it. He retired on February 1st, 1947. That is ten years ago."

By Mr. Freeman: I will skip the next few questions, and then Mr. Stevens asked to have the reporter mark four papers as Simpson Exhibits 1, 2, 3 and 4, and
548 then he proceeds to identify them on the record.

By the Court: Those are the same four?

By Mr. Freeman: Exhibit No. 1 is the affidavit of November 11, which has been rejected as Plaintiff's Exhibit No. 14. Then there is a copy of a telegram dated November 15, 1955 from H. E. Simpson to Robert Kennedy, counsel for the Senate permanent sub-committee on investigations. That is marked as—

By Mr. Thompson: We object to any such statement. It has been ruled out by the Court.

By the Court: Sustained.

By Mr. Freeman: That was Exhibit No. 2. Simpson Exhibit No. 3 was the affidavit of December 6th, which has been rejected as Plaintiff's Exhibit No. 15. Exhibit No. 4 is a letter from counsel to Washington, and the examination continues:

By Mr. Freeman: (Reading)

"Q. Mr. Simpson, I show you the document which has been marked as Simpson Exhibit 1 for identifica-
549 tion, apparently bearing your signature, and dated November 11, 1955. Is it correct that you signed that document?

A. It is.

Q. And, of course, that was signed under oath?

A. That is right.

Q. Before signing that document, Mr. Simpson, did you review the facts as best you could at the time to which the document refers?

A. I did."

By Mr. Meserow: I object to the questions referring to this document which has been excluded by your Honor.

By Mr. Freeman: It has to do with foundation proof, which I think is important. You are considering these rulings I assume, and if the foundation occurs—

By the Court: I don't see any harm in it. If they have the same irrelevancy to this issue, I will sustain the objection.

By Mr. Freeman: (Reading)

"Q. Did you prepare the document yourself?

A. Counsel prepared it, with my approval."

By Mr. Thompson: I object to reading the rest of these questions.

550 By the Court: If it pertains to exhibits which I excluded, they have no relevancy in this record.

By Mr. McConnell: I don't see how your Honor can rule on evidence that you have not even heard. He has a right to ask the question and then make the objection and you can rule on it.

By Mr. Meserow: Your colleague is too fast on the answers.

By the Court: Gentlemen, please not get into controversies. I will let the jurors go home. It is ten minutes of 5:00. Mum in the word; no talking.

I want to make one more observation. I don't know what reports you may read in the press. I find no fault with the press reports, but they are the reactions of a

reporter who makes them, and they should not influence your judgment in the least.

551 You can understand that, and I would prefer and I wish and I urge that you keep your minds open. I can't admonish you against reading them. I am a strong believer in freedom of the press, but I do want you to keep your minds independent and free and clear from any outside influences, conclusions, or reflections that may be published or broadcast or something of that nature. You understand why. Thank you very much, and have a nice evening.

By Mr. Thompson: If the Court please, this has nothing to do with freedom of the press. It is just as wrong for the jury to be told through a newspaper article something about this lawsuit as it is for me to stop them on the street and tell them. They ought not to read them, and I ask them not to do so.

By the Court: I am not going to amplify my statement. You understand what I have in mind. You have to give this case absolute fairness, independent of what you hear or see anywhere, except on the witness stand

552 and the evidence that I allow to go in as proper, competent, relevant and material evidence, and that which we strike out is as much out as anything that you might have heard, but you should not have. Do you want to make a comment?

By Mr. McConnell: No; I don't want to make any comment. Anything I would say would probably be bad.

By the Court: Good night and have a nice evening.

(Whereupon an adjournment was taken until the following day, Wednesday, April 27, 1960, at the hour of 10:15 o'clock, a.m.)

553 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Wednesday, April 27, 1960,
10:15 o'clock a. m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

554 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

555 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. McConnell: Your Honor, I have an oral argument before the Supreme Court of Illinois. They are having a special argument in a case, in which I represent one of the parties, as part of the inauguration of the new hearing hall out at the University of Chicago. The Court is coming here for the argument Friday morning.

I would like to ask that this be recessed for Friday morning.

By the Court: That this be recessed until Friday morning?

By Mr. McConnell: No, just on Friday morning.

By the Court: I think Mr. Freeman is fully able to take one morning and to go on with some of it, either the presenting of the offer of proof or something
556 else. This is the last week for the jury, and I am trying not to hold them up unduly.

As far as I am concerned, I have no objection, but I have that problem with the jury, and Friday is their last day.

Is that correct, Bob?

By the Clerk: That is right, your Honor.

By the Court: I want to expedite their attendance here as much as I can, and so if you can work it out, fine. Let's go on until tomorrow night. I have to be out at the University of Chicago tomorrow night on the dedication. The entire court is going there. Let's see what progress we make, and see if we can go on Friday with Mr. Freeman.

By Mr. Thompson: The dedication is on Sunday.

By the Court: I beg your pardon?

557 By Mr. Thompson: The dedication is Sunday.

By the Court: Tomorrow night we have a special

meeting at Kirkland Hall. All right; let's go. Bring in the jury. Have we reached the stage now where we are before the jury?

By Mr. Freeman: Yet; we would like the jury.

By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. Proceed, gentlemen.

By Mr. Freeman: When we suspended I was reading the deposition of Mr. H. E. Simpson, president of the Baltimore and Ohio Railroad.

I start with the question starting on Page 29, which is as follows:

"H. E. SIMPSON, having been first duly sworn, testified as follows:

Direct Examination (continued).

Q. Now is it correct, Mr. Simpson, that in your first discussion with Commissioner Cross in 1955 on this transfer subject, that you told him that you did not know any of the details?"

By Mr. Thompson: If the Court please, we object 558 to this inquiry, and we object to reading the questions. They are outside the issues that are before the Court and are subjects which your Honor has already excluded by pretrial ruling.

By Mr. Freeman: There is no exclusion of oral testimony in any pretrial ruling.

By the Court: What is the question again, please?

By Mr. Freeman: (Continuing reading);

"Q. Is it correct, Mr. Simpson, that in your first discussion with Commissioner Cross in 1955 on this transfer

subject, that you told him that you did not know any of the details?"

By the Court: The objection will be sustained. It is beyond the pale of this issue.

By Mr. Freeman: I understand, but we take exception to that, and we are trying to make a record.

By the Court: You may make your offer of proof.

By Mr. Freeman: I will make my offer of proof,
559 and I am doing it by asking the questions first, and we will then make one offer of proof.

By the Court: I am sustaining the objection to that on two grounds. First, it is beyond the pale of the issue, and secondly, it certainly is inadmissible as against any other defendants except the railroad company and himself.

By Mr. Freeman: We don't agree with that, but I don't have to argue that any further. The next question is:

"Q. Specifically, did you tell him, 'I did not know any of the details?'"

By the Court: I think we have gone far enough on that. I have indicated a ruling on that conversation. Let's not have a ruling on each question and answer in it.

560 By Mr. Freeman: Very well, sir. I will turn now to page 31 where the question is:

By Mr. Freeman: (Reading)

"Q. Did you subsequently ascertain certain details about the transfer situation which you relayed to Mr. Cross?"

By Mr. Thompson: If the Court please, we object—

By the Court: Same objection; same ruling.

By Mr. Freeman: Then I will eliminate the series of questions that deal with that subject and make an offer of proof.

By Mr. Thompson: If the Court please, the witness is testifying—I mean, Mr. Freeman is testifying by the mere reading of the questions.

By Mr. Freeman: No, I am not. I have a right to make—

By Mr. Thompson: You have already made it. The Court has ruled all this out, and therefore you have got your record made.

By Mr. Freeman: Excuse me, Mr. Thompson. I have a right to form the basis for my offer of proof.

561 By the Court: Proceed.

Did you want to say something, Mr. McConnell?

By Mr. McConnell: Yes, I want to say that this goes to the nature of the service, what the conditions were. There was a discussion there of what was the nature of the service that was being rendered as compared with what would be rendered. It is squarely within the issue that your Honor is trying.

By the Court: The objection will be sustained. It isn't squarely before me at all. It goes specifically and definitely to the conspiracy charge, and I am excluding it, knowingly and emphatically.

By Mr. Freeman: All I am doing is trying to lay the basis for an offer of proof.

By the Court: I have no objection to your making a record. I want the record to show that I don't want this case to go up on my denial of plaintiff of any right to make a record or to exclude anything except what I am excluding legally and properly under the ruling.

562 By Mr. Freeman: Then on page 33:

By Mr. Freeman: (Reading)

"Q. After your meeting in Washington at which Mr. Burgess and you represented the Baltimore and Ohio in conference with the Commissioner, did you call Commissioner Cross at any time to talk about your financing?"

By Mr. Meserow: Same objection.

By The Court: Same objection; same ruling.

By Mr. Freeman: There is a series of questions dealing with that conversation which I will omit.

Then I will turn to page 40:

By Mr. Freeman: (Reading)

"Q. Do you recall on or about Monday, May 23, 1955, which would be right after the May 19 meeting of the Committee of Six in Chicago, that Mr. Whittington—"

By Mr. Freeman: Of the Baltimore and Ohio.

By Mr. Freeman: (Reading)

"Q. —came to your office and gave you a report on the progress of negotiations in Chicago?

A. No, I have no recollection of that particular date and talking to Whittington about any—on the subject of transfer of passengers and baggage.

563 Q. Do you recall any meeting with Mr. Whittington after this April 11th report—"

By Mr. Freeman: Which was read to you yesterday and identified.

By Mr. Freeman: (Reading)

"Q. —in which he brought you up to date on the transfer situation in Chicago?

A. To the best of my recollection anything that Mr. Whittington told me after that April 11th meeting was in substance as I repeated earlier in the cross examination, to the effect that the sub-committee was studying the matter.

Q. Don't you recall, Mr. Simpson, a conversation with Mr. Whittington in which he summarized for you the Parmelee proposal and the Keeshin proposal and gave you his judgment on the two proposals?

A. I have no specific recollection of him telling me other than the two companies had made proposals to the

sub-committee, but what the gist of the proposals were, I have no specific recollection.

564 Q. Well, I am not going to ask you to recall the gist of the proposal, but merely whether or not you recall Mr. Whittington having told you the gist of the proposal.

A. Well, it is something I wouldn't want to say no, and I wouldn't want to say yes. I assume that some time during there he may have mentioned something to me verbally about the progress that was being made in connection with the transfer of passengers and baggage through Chicago.

Q. And giving you a description, or a comparison, I would say, of the two proposals which were then under consideration?

A. No, I can't remember that.

Q. Can you remember him ever mentioning the name Keeshin at any discussion with you on the subject?

A. Well, he—surely he mentioned that Keeshin company was one of the bidders in connection with this transfer along with another company, as I remember, Willett, and as I said previously, some fourteen other companies that were interested in providing the service.

Q. But you don't recall any discussion with Mr. Whittington in which only Keeshin and Parmelee were dis-
565 cussed?

A. Oh, I think somewhere along the line, why, it simmered down to those two companies as the bidders for the service.

Q. Do you recall somewhere along the line Whittington telling you about the bids of those two companies?

A. No, not in dollars and cents or any of the other details.

Q. I would like to show you a book—"

By Mr. Freeman: Mr. Stevens was identifying the book and asked him to look on Page 1. Is this the one—

By Mr. Thompson: Well, read what it says.

By Mr. Freeman: I think I had better.

By Mr. Freeman: (Continuing reading)

"Mr. Stevens: I think, just for the record, we should identify these two appointment books so we will keep them straight. One has the name H. E. Simpson on the first page. Is that the one maintained on your desk, Mr. Simpson?

The Witness: That is right."

By Mr. Freeman: Mr. Stevens had it marked for identification as Exhibit 5, and I would like to have marked 566 for identification here some photostated copies of that book as Plaintiff's Exhibit 17. These photostat copies consist of pages from the April 8 date, April 21, April 23, April 29, May 4, and May 19. In other words, six pages in all.

(Thereupon said documents were marked Plaintiff's Exhibit 17 for identification.)

By Mr. Freeman: Then Mr. Stevens goes on:

"Mr. Stevens: And the other similar red book with the name A. W. Snell,—"

By Mr. Freeman: The witness says:

"The Witness: Snell, assistant to the president."

By Mr. Freeman: Then Mr. Stevens said:

"Mr. Stevens: I would like to have that marked on the inside cover as Simpson Exhibit 6."

By Mr. Freeman: I have some photostatic copies of pages of the Snell diary which I would like to have identified as Plaintiff's Exhibit 18. It consists of pages from

April 21, April 23, April 29, May 4, May 27, September 7, and September 8, seven pages in all.

567 The original diary, I think, is in court. I would like to have the Snell diary so that we can reproduce the page for April 8, which we did not previously reproduce.

By The Court: You may furnish it any time.

By Mr. Freeman: So if we can identify these eight pages as Plaintiff's Exhibit 18, and I will supply the record with a photostatic copy of the April 8 page.

By The Court: You may supply it at any time and it will be so identified.

(Thereupon said documents were marked Plaintiff's Exhibit 18 for identification.)

568 By Mr. Freeman: I will now turn to page 45, Mr. Thompson.

By Mr. Freeman: (Reading)

"Q. Do you recall, Mr. Simpson, receiving a telephone call from Commissioner Cross while you were in New York City on May 25, 1955?"

By Mr. Meserow: Objection.

By The Court: Sustained; same ruling.

By Mr. Freeman: Now there are a series of questions with respect to that telephone call which I will omit pursuant to your Honor's suggestion, but I will make an offer of proof of that.

I will now turn to page 47.

By Mr. Freeman: (Reading)

"Q. You did have an appointment with Commissioner Cross for that day, did you not?"

By Mr. Freeman: The question refers to April 8.

By Mr. Meserow: Same objection.

By The Court: Same ruling.

By Mr. Freeman: There is a series of questions and answers on that one, and I will leave that out.

569 I will be glad to read those pages, Mr. Thompson.

By Mr. Thompson: What pages?

By Mr. Freeman: You liked that last answer. Shall I read on?

By Mr. Meserow: Objection.

By Mr. Thompson: No, it is outside the issues. There is no use wasting time.

By Mr. Freeman: Page 55.

By Mr. Freeman: (Reading)

"Q. Did he—"

By Mr. Freeman: Referring to Cross.

By Mr. Freeman: (Reading)

"Q. —mention the fact that he called Mr. Fred Carpi of the Pennsylvania Railroad that same day?"

By Mr. Meserow: Objection, your Honor.

By The Court: Sustained.

By Mr. Freeman: We will leave out the following. Then on page 56.

By Mr. Freeman: (Reading)

"Q. Do you recall that Mr. Cross telephoned you on May 13, 1955?"

By Mr. Owens: Objection, your Honor.

570 By Mr. Freeman: I will leave the May 13th conversation out.

By Mr. Owens: Your Honor, this procedure is just pointing out the fact that there have been conversations with Mr. Cross. The substance of those is not—

By The Court: I think that has followed for a long time.

By Mr. Owens: And he should not be permitted to go through this record, page by page, and pick out only the references to Mr. Cross, and leave the jury with the im-

pression that that is all that has gone on here. He should be instructed not to do so.

By The Court: Proceed.

By Mr. Freeman: I have a right to lay my foundation for the offer of proof, and I will only offer the answers that are being excluded as my offer of proof, and Mr. Owens has no problem.

By The Court: I will sustain the objection. That is all I can do.

By Mr. Owens: Could you instruct him not to read references to Mr. Cross?

571 By The Court: Mr. Freeman and everybody understands now that any conversation with Mr. Cross, any meetings with Mr. Cross, are not part of the issue before me, and are inadmissible and improper, but I think his purpose is perfectly logical and fair. He is making his record and he wants to make his offer of proof of the answers which I am excluding from the record.

By Mr. Owens: Your Honor, at this time he could make a statement that—

By The Court: Whether he met Hugh Cross once is not a question here, but the question is what was said, if they met.

By Mr. Freeman: And I have got what was said, but he won't let me go into it.

By Mr. Owens: Your Honor, he can make the statement to the Court that there were other conversations or other meetings, and out of the presence of the jury then bring those to your attention and make his offer of proof at that time, if the offer of proof will be accepted.

572 By The Court: That is what I would like to have happen, but it is not happening, and I will let him go on as to the way it was.

By Mr. Freeman: We offered to stipulate with counsel at the beginning, and they refused it.

By The Court: There was the general offer to stipulate, to rely entirely on an offer of proof, and it was rejected, so I have no choice about it. We are going through it page by page.

By Mr. Thompson: If the Court please, I should like to make a statement on behalf of the defendants I represent. We are not only having the question read as to whether a conversation was had, and no answer is permitted to the question because it is outside the issue, but then he is saying there are a lot of other questions relating to this conversation as though any conversation ever took place, without anything in the record to show that there was even a conversation.

By The Court: I agree with you, Judge Thompson,
573 and I will instruct the jury, and I have instructed them before, and I will do so again, that anything that has been stricken by me is not to be regarded by them, and I am not permitting any answers or conversations to go in, and they cannot indulge in any inferences of what might have been said.

By Mr. Thompson: I appreciate that, your Honor, but there is an old saying that when you drive a nail in the barn door and then pull the nail out, the hole is still there, and how the jury can get this out of their heads after it gets in is beyond me.

By The Court: I will use a little putty on it. Let's go.

By Mr. McConnell: This hole should be there.

By Mr. Freeman: Page 58. (Continuing reading):

"Q. Well, now, Mr. Simpson, you did call him back on two or three occasions, did you not?"

By Mr. Freeman: Meaning Cross.

574 By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Freeman: The question on Page 61:

"Q. But he did", meaning Cross, "make subsequent inquiries about the matter to you, is that correct?"

By Mr. Meserow: I object, your Honor.

By Mr. Thompson: Objection.

By the Court: Sustained.

By Mr. Meserow: I guess it doesn't do any good for your Honor to instruct counsel. He is going through the pages and picking out these questions deliberately which are objectionable.

By Mr. Freeman: I have skipped a whole series of questions which bear on the same issue in an effort to save time and not ask the questions.

By the Court: I have explained my position and reactions to it. I am going ahead with it as we are doing.

By Mr. Freeman: (Continuing reading)

"Q. In those subsequent telephone conversations, did he discuss any subject except the transfer matter?"

By Mr. Meserow: Objection.

575 By the Court: Objection sustained.

By Mr. Freeman: (Continuing reading)

"Q. Did you ever receive any calls from other commissioners on those subjects?"

By Mr. Thompson: Objection.

By the Court: Objection sustained.

By Mr. Freeman: On Page 62. (Continuing)

"Q. Did he . . ." Cross —

By Mr. Owens: Objection to the interpolation.

By Mr. Freeman: (Continuing)

"Q. Did he ever state that he was very much interested in seeing that J. L. Keeshin got the new contract?"

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Thompson: Let's have the answer as far as I am concerned. I would like to try this whole lawsuit.

We have nothing at all to apologize for if we get all the facts, but to get it this way is impossible for anybody to know what is going on.

By Mr. Freeman: We agree.

By Mr. McConnell: You are doing your best to
576 keep it out. You have been objecting all the way through. It isn't just your co-counsel. You have been doing just as much objecting as anybody else.

By Mr. Thompson: I am only doing what the Court has instructed us to do.

By Mr. Freeman: (Continuing)

"Q. What was the principal interest of the B&O Railroad?

A. To hold down the cost of the operation in the City of Chicago just the same as it is in any other matter as we are involved contrarywise. You further understand that the railroads were under great pressure by the shipping public because of the high costs and deficits of operating passenger service which they contended contributed to the railroads' constant request for increases in freight rates, and if the railroads would diligently hold down their passenger expenses they wouldn't be in need of money constantly to take care of their operation, so it was always the responsibility of the railroad presidents with the passenger traffic officers to hold down expenses.

577 Q. In general, Mr. Simpson, was that the sum and substance of the instructions which you gave your passenger people?

A. It was, with full authority to act for the B&O railroad, realizing that Mr. Whittington who succeeded me as general passenger traffic manager was familiar with the transfer of passengers and baggage through Chicago and he was fully competent in entering into negotiations and making a contract which, in his opinion, would be satisfactory to the B&O.

Q. Do you recall a telephone conversation with Mr. Cross on June 8, 1955 in which Mr. Cross mentioned the fact that Keeshin was going to be supplying the transfer service after October 1?"

By Mr. Meserow: Objection.

By the Court: One second. I want to get one citation, and I will read it to you and ask you not to do it again.

Get me that citation where it is obvious.

I am reading from the case of Phipps —

By Mr. Freeman: Should this be outside the presence of the jury?

578 By the Court: No. This is not going to be prejudicial to anybody.

It is the case of Phipps *v.* Nederlandsche Amerikaansche Stoomvart, Maats, 259 Federal Reporter, 2nd Series, page 143, where it states, and I am reading on page 146 as follows:

"Thus upon its face the proffered evidence was incompetent to support the theory for which it was offered, and the court may reject it."

It is becoming obvious that the repetition of question after question about the matter on which the Court has ruled is not competent and proper as distinguished from an offer of proof. It ought not to be hammered and repeated before the jury time and time again, and I would appreciate it very much if you would make your offer of proof on it, and all the conversations, if any —

By Mr. Freeman: Excuse me. I have only this problem, as Mr. McConnell has well stated it. The statute controlling in this regard is Section — Rule 43(b) of the Federal Rules of Civil Procedure.

579 By the Court: That is where I got this from.

By Mr. Freeman: It requires we do present a witness, and we do go through this deposition or that we do it in person and we ask a question which may be

objected to, and it is sustained, and then we offer to prove what the witness would say pursuant to that question.

We are not going through every question and getting an objection. We are trying to shorten it by saying, "Here is a series of questions we will ask," or "Here is a subject matter we will cover."

You will also recall that when we sought to make an offer of proof, for example in the case of Mr. Feucht, who later took the stand, Mr. Thompson objected as did Mr. Owens and Mr. Meserow and Mr. Keating, to the form of the offer. We didn't have a witness there. We were not asking him a question to which there could be an objection.

We find ourselves in an uncomfortable position of both being accused of bad form in making the offer of proof and being accused of bad form when we ask the 580 question. I think we have to try to protect our record by asking the question.

By the Court: I will not object, and I will permit your form of offer of proof in the absence of the jury by overruling their objections to the form. You have had the witness on the stand, or you have these depositions, and you have identified the witness, and you have asked questions about conversations and about issues not before this jury.

The same ruling prevails on all of the same questions, and if you ask him a million times, it will be the same ruling, and it becomes obvious to the jury and to the Court that you are merely repeating something that the Court has ruled on.

By Mr. McConnell: Their objection is right. They have made a sound objection to proceeding without the witness or without the deposition, and we have to make

a record, and your rulings are going to be reviewed.

581 By the Court: All right, but the witness has been on the stand and depositions are being read.

By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.

By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.

By Mr. McConnell: We have a right to ask them.

By the Court: You can offer proof on it.

By Mr. McConnell: We have a right to ask questions which we offer on this issue, and your Honor can sustain their objections to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.

582 By the Court: Well, I will stop you now, and I don't appreciate threats. That is the law and my judgment, and I can only rule upon it as I see it, and I forbid you from asking, repeating the same questions over and over again upon which I have ruled specifically a hundred times that it is not admissible and is improper under this issue.

By Mr. Freeman: Your Honor, may I make one other observation? The conversation or alleged conversations between Cross and Simpson have been covered here, but we do propose to make offers or proof of conversations that Mr. Cross had with other defendants, and we should not be prevented from making the foundation for that offer.

By the Court: This does not bar you from making an offer of proof in the absence of the jury.

By Mr. Freeman: I assume you are merely barring me from asking questions that have to do with Cross and Simpson?

By the Court: The same repetitious questions over
583 and over again. I am not barring you from making the offer. You will make all the offer you want but not in the presence of the jury, because the issue before them is limited.

By Mr. Freeman: We are seeking to present evidence within the limits of your ruling.

By the Court: By your offer of proof.

By Mr. Freeman: We are dealing with the public injury problem.

By the Court: Within the issue I will permit you to go as far as the questions will permit.

By Mr. Freeman: We think conspiracy and the fact that the public service of Cross was destroyed by this is a part of the public injury.

By the Court: That is what you think, and make your offer of proof but not in the presence of this jury.

By Mr. Freeman: May we have a recess?

By the Court: Yes, you may have a recess, ten minutes.

By Mr. Freeman: Thank you, sir.

(Thereupon the following further proceedings were
584 had outside the presence and hearing of the jury:)

By the Court: Mr. McConnell, we are not playing to the galleries here. I am ruling upon rules of evidence as I see them, and these are not evidence.

By Mr. McConnell: I am not playing to any galleries.

By the Court: I am not going to have any more of it.

By Mr. McConnell: I am trying to try a lawsuit. I am being prevented from trying it at every stage of it.

By the Court: It doesn't call for insults or abuse.

By Mr. McConnell: I am not making any insults.

By the Court: You certainly do when you say you will have to be dragged out by a sheriff in stopping you from making the proof. I will stop it.

By Mr. McConnell: There comes a time when a lawyer has to stand up and state his client's case.

585 By the Court: And as a gentleman in the bounds of the law.

By Mr. McConnell: We have a right to ask these questions.

By the Court: You have a right to your say, but I have ruled against it, and you may make your record.

By Mr. McConnell: We can't make the record without asking the questions. That is the point.

By the Court: What do you want to say, Mr. Freeman?

By Mr. Freeman: I have nothing further to say.

By the Court: All right; a ten-minute recess.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

586 By the Court: All right. Before the jury comes out, I want to read just a little more.

Reading from Federal Rules of Civil Procedure, Rule 43, page 375, 108:

> "Where testimony is excluded by trial court, an offer of proof must be made to preserve question for appeal, if significance of excluded evidence is not obvious."

Now, this is obvious. I have ruled it a million times the same way.

Then it goes on, the same page:

> "If significance of excluded evidence is not obvious, offer of what counsel expects to prove by witness must be made to preserve question on appeal."

Citing 193 Fed. 2d 760.

Then I am going to Civil Procedure, Federal Digest, 31 C, page 2011:

"Where introduction of evidence can only result in a confusion of issues, or inject many new controversial points collateral to the issues, or generates surprise or undue prejudice disproportionate to the usefulness of the evidence, it should not be admitted
587 and such a matter is within the discretion of the trial court."

Citing 193 Fed. 2d. 479.

Then reading from the next page:

"Direction of the orderly presentation of evidence is in the discretion of the trial court."

Citing 177 Fed. 2d. 954.

All right; bring out the jury.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. Freeman: In view of your Honor's ruling, I will not continue the reading of the deposition of Mr. Simpson, but I will seek to cover it in an offer of proof outside the presence of the jury.

However, before I conclude with Mr. Simpson, I would like to offer in evidence as the plaintiff's exhibits those exhibits that have been previously marked as Exhibits 15 and 16, which were Simpson affidavits, and then Exhibit 17, which are the pages from the Simpson diary, and Exhibit 18, which are the pages from the Schnell diary.

Are there any objections?

588 By the Court: Is there an objection?

By Mr. Thompson: Yes. I don't know where the others are that he is offering.

By Mr. Meserow: The Judge has ruled on those affidavits, Exhibits 15 and 16.

By Mr. Thompson: You have already ruled on 15 and 16.

By Mr. Freeman: Has 16 been admitted? Then I will read it to the jury.

By Mr. Meserow: There are two affidavits. They have been denied admission.

By Mr. Freeman: I am sorry.

By Mr. Thompson: They have both been excluded.

By Mr. Freeman: Yes. Exhibits 14 and 15 have already been ruled upon, I am told, so I withdraw that offer, and I just offer Plaintiff's Exhibits 17 and 18, which are the diary pages.

By Mr. Thompson: If the Court please, we object to Plaintiff's Exhibit 17 for identification, first on the ground that the photostatic copy which they are offering in evidence has superimposed on it a slip of paper on which is written "H. E. Simpson diary."

The book that they are referring to is before your Honor. It is in no sense a diary. It is nothing but an appointment book, on which is written appointments,
589 and then scratched out, and some more appointments written on, and so on.

This first page here is so characterized as a diary, whereas it is nothing but an appointment, and an appointment is scratched off of the page, so it shows it didn't make place.

The next page is in respect to some appointments on the face of it in New York, with no reference to anybody that has any connection with this lawsuit.

We object to these documents as immaterial and beyond the issues before the Court and as improperly characterized as a diary.

By Mr. Freeman: Mr. Thompson is correct about this little notation, which my secretary put on, but I can remove it, and I will.

By the Court: May I look at them, please?

By Mr. Freeman: Yes, your Honor.

By Mr. Thompson: You can remove that, of course.

590 By the Court: The objection will be sustained, and they will be excluded.

By Mr. Thompson: That applies also to Plaintiff's Exhibit 18, for identification?

By the Court: Both 17 and 18.

By Mr. Thompson: All right.

By Mr. Freeman: Would counsel supply me with the first page of 18 so we can have the excluded exhibit in the record, a photostatic copy? I will remove this diary reference.

By the Court: That is not the basis for my ruling, whether it is there or not. It has been sufficiently identified as his book by the depositions, but I am ruling it is beyond the pale of the issue.

By Mr. Freeman: I would like now to proceed with the deposition of Mr. Fred G. Gurley, who is a defendant in this cause and a former president of Santa Fe Railroad.

Mr. Gurley's deposition was taken in this cause on Wednesday, May 29, 1957, in the United States Court House in Chicago, Illinois, before Kay Arboit, notary public.

By Mr. Thompson: If the Court please, Mr. Gurley is here in the court room sitting in the second row, and we object to reading his deposition when the witness

591 is available. We ought to have some live testimony in here.

By Mr. Freeman: We will have some live testimony, but we have the right to read this deposition as an adverse witness.

By the Court: I will let you go on with the deposition. Objection overruled.

By Mr. Freeman: The examination was conducted by me. (Reading)

"FRED G. GURLEY, being first duly sworn by notary public Kay Arboit, testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name?

A. My name is F. G. Gurley.

Q. And your residence, please?

A. The business address is 80 East Jackson Boulevard, Chicago.

Q. Do you hold a position with the Atchison, Topeka and Santa Fe Railroad?

A. I do.

Q. What position was that in 1955?

A. President.

592 Q. How long were you president?

A. I was elected president in August of 1944.

Q. You held the position of president until recently?

A. That is correct.

Q. Mr. Gurley, who made the statements to you to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the Chicago transfer contract?"

By Mr. Owens: Objection.

By the Court: Objection sustained to that line of questioning on Mr. Cross, and you will please refrain from making reference to it, and you may make your offer of proof.

By Mr. Freeman: I would just like to ask one other question with respect to this which is more pointed to that issue.

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman: On page 2396 there is a series of questions dealing with that same subject which I will refrain from reading, pursuant to your Honor's ruling.

On page 2398, this is not the same.

593 By Mr. Freeman: (Reading)

"Q. Did you advise anybody or tell anyone of these statements that you had heard with respect to Cross' prospective association with Keeshin?"

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman: On page 2403 and 2404 I make this statement:

By Mr. Freeman: (Reading)

"By Mr. Freeman: Well, let me identify as Gurley Exhibit 1 this typed copy of an affidavit allegedly prepared by Mr. Gurley on November 8, 1955, and, as Gurley Exhibit 2, this typed copy of an alleged affidavit prepared by Mr. Gurley on November 10, 1955."

By Mr. Freeman: I showed the witness the documents.

By Mr. Freeman: (Reading)

"Q. Mr. Gurley, I hand you the documents that have been marked Gurley Exhibits 1 and 2 for identification and, subject to check for accuracy as far as typographical or other errors are concerned, are they copies of the affidavits that you filed with the Senate committee?"

594 By Mr. Meserow: Objection, your Honor, to any reference to the Senate committee, which should be out.

By the Court: Let him finish the question.

By Mr. Freeman: (Reading)

"A. Well, they look familiar. Subject to those qualifications, I would say yes."

595 By the Court: The objection is sustained, and the answer may be stricken.

By Mr. Freeman: May I mark, for the purpose of identification, as Plaintiff's Exhibit No. 19, this affidavit executed—

By Mr. Thompson: Just a minute.

By Mr. Freeman: I have to identify it. This is an affidavit executed November 8 by Fred G. Gurley and previously identified in his deposition as Gurley Exhibit No. 1.

As Plaintiff's Exhibit No. 20, this affidavit executed by Fred G. Gurley on November 10, 1955, and identified in his deposition as Gurley Exhibit No. 2.

As Plaintiff's Exhibit No. 21, this telegram from Robert F. Kennedy, chief counsel, Senate Permanent Subcommittee on Investigations, to Mr. Gurley on November 10, 1955.

As Plaintiff's Exhibit No. 22, this subpoena from the Senate Committee dated November 4, directed to Mr. Fred Gurley.

(Thereupon said documents were marked Plaintiff's Exhibits 19, 20, 21 and 22 for identfication.)

596 By Mr. Freeman: I offer these documents that have been identified as Plaintiff's Exhibits 19, 20, 21, and 22 as Exhibits in evidence with those numbers.

By Mr. Thompson: Of course the documents are immaterial under the issues which the Court has defined, and even the references to them and the characterization of them is highly prejudicial, and this sort of prejudicial conduct should not be continued any longer. The defendants can't get a fair trial in a court with this sort of conduct going on with these implications without us having a single opportunity to meet it.

By Mr. Freeman: I don't know what implications there are when you state facts, and all I am doing is stating a fact of certain things having occurred, the exe-

cution of affidavits, the issuance of telegrams and subpoenas.

By Mr. Meserow: Your Honor has already excluded them.

By the Court: May I look at them, please?

597 By Mr. Meserow: Your Honor has ruled and excluded these in previous rulings.

By the Court: All of them will be excluded and any references made to them will be stricken from the record.

By Mr. Owens: Your Honor, with respect to future documents in these areas that have been proscribed by the Court, could the Court direct the defendants, the attorneys for the plaintiff to hold those and offer them out of the presence of the jury?

By the Court: I will not go beyond my earlier admonition. I have made my record clear, and I will persist in it.

By Mr. Freeman: Page 2414. I think you have a ruling on that already, and I will leave that. Page 2419. (Reading):

"Q. To what extent were you kept in touch with the negotiations for the Chicago transfer services during 1954 and 1955?

A. Oh, in a very general way.

Q. What type of contact did you have with these negotiations?

598 A. Well, I knew that it was going on for some considerable time. I knew that some other people were being interviewed and bids were taken. I did not know the details of the bids or anything of that sort.

Q. Did you get any written memoranda from Mr. Duffy with respect to the Chicago transfer negotiations prior to June 3, 1955?

A. I don't recall that I ever did. The negotiations which started in 1954, I don't know that I did.

Q. Then, whatever reports were made to you, were they made orally?

A. I would think that would be correct.

Q. Would you receive those from Mr. Duffy?

A. Oh, I might receive those from any number of people, because now you get into the question of what is going on.

Q. I would like to know that.

A. I would, too, sometimes, myself. The administration of the affairs of a large company takes you into conversations with a lot of people and I would be very much perplexed to recall where I found out about a lot of things."

By Mr. Freeman: I am skipping a few questions.

By Mr. Thompson: If your Honor, please, I think—

599 By Mr. Freeman: (Reading)

"Q. Did you have regular meetings with Mr. Duffy with respect to the operation of his department?

A. Oh, yes and no. We have staff meetings and such, and sometimes I will visit with the traffic people while they are having meetings and, no doubt I can now answer your question and say that I had a meeting with Mr. Duffy about his department.

Q. Did Mr. Rydin, from time to time, discuss with you the Chicago transfer situation?

A. I can't recall that he did.

Q. You can't recall any instance when he might have mentioned it to you?

A. No.

Q. Did you have any meetings or any conversations with Mr. Anderson, your general passenger traffic agent, with respect to the Chicago transfer situation?

A. I can't remember them. Now, of course, I say again you asked me if I had a conversation with Mr. Anderson about this. You asked me if I had a conversa-

tion with Mr. Anderson and you asked me if I had a conversation with Mr. Anderson about it and I say, I don't recall it. I don't recall whether I had any conversation with him about dining car service, but you do have 600 conversations and you do keep in touch with things the best you can. Sometimes you don't do so well.

Q. Would it be customary for you to have talks with Mr. Anderson about passenger service, or would your conversations be with the vice-president?

A. Oh, it would be both.

Q. How about Mr. Sloan, who is the assistant passenger agent?

A. I would have less with him.

Q. Did you have no conversation with Mr. Sloan on June 2nd, 1955 that you might recall, with respect to the Chicago transfer situation?

A. No.

Q. Did you give Mr. Sloan any instructions with respect to his position on that committee?

A. I did not.

Q. Did you give Mr. Anderson any instructions?

A. I did not.

Q. When were you advised for the first time of the vote that the Santa Fe was going to cast at the committee meeting on June 3rd?

A. Well, sometime shortly before that. I wouldn't attempt to put a date on that but, it was pretty close 601 up to that time.

Q. And who advised you?

A. I think it was Mr. Rydin.

Q. What did Mr. Rydin say to you?

A. Well, the general fact that the vote was coming up soon and which way did we vote.

Q. Will you finish your answer?

A. I finished my answer.

Q. You said Mr. Rydin said to you, 'Which way did we vote?'

A. Yes.

Q. What was your answer to him?

A I told him to vote for Keeshin.

Q. All right. Had you had any information with respect to that, prior?

A. Well, I had information either then or immediately prior to that. The question had arrived at where the survey showed—if that is the word—that there were two bids, one Keeshin, one Parmelee. I had that.

Q. Had you received any—I think you have answered this before—any memorandum of the passenger traffic people prior to the time you told Mr. Rydin that?

A. Written memorandum?

Q. Yes.

602 A. No.

Q. Had you received any information with respect to the attitude of your passenger traffic people prior to the conversation with Mr. Rydin?

A. I don't know that I received anything prior, but at the time of the conversation, I think Mr. Sloan's opinion was stated.

603 Q. What did Mr. Rydin say with respect to Mr. Sloan's opinion?

A. Well, as to the basic question of which way to vote?

Q. Well, will you tell us everything that happened at that meeting?

A. I think the general effect was that Mr. Sloan thought we should continue with Mr. Parmelee—not Mr. Parmelee, I am sorry.

Q. Did you say anything else to Mr. Rydin in addition to vote for Keeshin?

A. Well, I got the information as to the respective bids, as to what relative standing they had. I got that, of course.

Q. What was that?

A. They were not far apart; that the Keeshin bid was good or better.

Q. And did Mr. Rydin say that to you?

A. That is my recollection.

Q. In what respect did Mr. Rydin say that the Keeshin bid was good or better?

A. I can't answer that. I wouldn't attempt to quote him.

Q. How long did this conversation last?

A. Not very long.

604 Q. I don't know whether we have exhausted your recollection, Mr. Gurley, but, with your indulgence, will you just tell us everything that you can recall that Mr. Rydin said to you in that conversation?

A. No, I don't know that I can recall much more than I have said. Certainly we did not get into a discussion as to the nickels and dimes of it. It was a summation or evaluation of it. We did not get into the details of it.

Q. Did Mr. Rydin make a recommendation to you?

A. I don't recall that he did. I think he merely reported.

Q. Merely reported Sloan's recommendation?

A. Yes. I don't recall that he added one of his own.

Q. Where did this meeting take place?

A. Well, it would be either my office or Mr. Rydin's office; I don't know which. We had adjoining offices and we would go back into them.

Q. You think it occurred shortly before the committee meeting?

A. That is correct.

Q. Would that be on June 2nd or June 1st?

A. I don't recall what date it was, but I know
605 that it was clearly close to that time.

Q. Did Mr. Rydin at that time advise you that Keeshin had contacted executives of other railroads?

A. He did not.

Q. Did Mr. Rydin advise you at that time that Mr. Cross had contacted executives of other railroads?

A. He did not.

Q. Mr. Gurley, do you recall that you were in Chicago during the week of May 31st through June 2nd?

A. I don't recall it, but that book would show it.

Q. Would you look at the book and see if you can recollect it?

A. Well, the record shows I was in my office May 31st to the morning of June 2nd. It shows that I left in the morning of June 2nd for a trip over to the T.P.&W.—"

If I may interpolate, that is the Toledo, Peoria and Western Railroad.

"It shows that on the morning of June 3rd I was in the office for an hour and flew to Detroit with Dr. Miller of Northwestern University to see Mr. Curtice of General Motors.

606 Q. On the basis of refreshing your recollection when you look at the diary, can you now tell us more precisely when you might have had this meeting with Mr. Rydin?

A. No, I cannot.

Q. Well, we do know it wouldn't have been the afternoon of June 2nd, in any event, because you weren't in town.

A. That is a reasonable assumption.

Q. Would it also be a reasonable assumption that your meeting with Mr. Rydin was either May 31st or June 1st or the morning of June 2nd?

A. I don't know whether that would be a reasonable assumption or not."

By Mr. Freeman: I will leave out some questions. Then page 2429.

By Mr. Freeman: (Reading)

"Q. Let me ask you, Mr. Gurley: If contact had been made with executive officers of other railroads with respect to this type of negotiation, wouldn't that involve a matter of policy that you would want to be apprised of?

A. No.

Q. You would not regard that as of any signifi-
607 cance to the proper management of the Santa Fe?

A. No.

Q. Would you expect that if your passenger people had heard that Cross had made contacts with the presidents of some of the eastern railroads that you would want to know about it?"

By Mr. Meserow: Objection.

By The Court: Sustained.

By Mr. Freeman: I will leave that out.

Next, page 2432.

By Mr. Freeman: (Reading)

"Q. Does the Santa Fe have matters of regulatory importance pending before the Interstate Commerce Commission almost constantly?

A. Well, I suppose we do, although a big railroad like ours, the regulations pending, I suppose there is something pending sometime or other most of the time. Whether there are gaps in it or not—

Q. Did you have a very significant rate proceedings involving the elimination—"

By Mr. Meserow: Objection.

By Mr. Freeman: (Reading)

"Q. (Continuing)—elimination of discrimination of intrastate rates along your system?"

608 By Mr. Freeman: That is the end of the question.

By The Court: Objection sustained.

By Mr. Freeman: All right. I will leave that out.

Then I identified a series of exhibits, but I will skip those and start with page 2435.

By Mr. Freeman: (Reading)

"Q. Will you look at Gurley Exhibit 9, which is dated June 14, 1955.

Was that memorandum addressed to you? I assume you saw that.

A. I saw that. It has my personal file check on it.

Q. Was that memorandum routed to other people in the organization?

A. What is that?

Q. Was that memorandum routed to other people in the organization?

A. Well, the memorandum is addressed to me, with a copy to Mr. Rydin. There is a check mark indicating that he saw it and there is a check mark indicating that Mr. Marsh saw it.

Q. Do you know if this was the first memorandum

609 that you received, bearing upon the Chicago transfer situation?

A. I couldn't answer that but I answered those others.

Q. Do you know of any other memorandum that you received prior to that?

A. No, I do not.

Q. Mr. Gurley, you have been served with two subpoenas and I would like to just go through them and see what information has been produced with respect to them. The first subpoenas—"

By Mr. Freeman: I will leave that out. Then question on page 2439.

By Mr. Freeman: (Reading)

"Q. Well, we have reproduced all of those papers that were turned over to us from the president's file. So far as we know, it consists of the 28 sheets that you have before you. I have no reason to doubt it, but I just want to know whether you know of any other papers other than those papers which have been turned over to us previously.

A. Well, the answer to your question would be no.

Q. Will you notice that the memorandum prior to June 14, 1955, which has been identified as Gurley Exhibit 9 is preceded by a memorandum dated 1950?

610 A. What is that, now?"

By Mr. Freeman: Then the question was repeated.

By Mr. Freeman: (Reading)

"A. Well, taking a hurried look at these papers you handed me, I notice a file identified as SF-10 which is dated June 14, 1955, and immediately adjacent is one marked SF-11, dated November 29, 1950.

Q. Were there any memoranda sent to the president's office or brought to the president's office or to your attention during the period from November, 1950 to June 14, 1955, bearing upon the Chicago transfer situation, that you know of?

A. The answer to that is no. I do not know.

611 Q. Would the position of those papers indicate to you that you received no memorandum on the Chicago transfer situation during that period?

A. I don't know how to answer that, but, the file you gave me doesn't show anything."

By Mr. Freeman: I am leaving out some questions about Mr. Cross.

By Mr. Freeman: (Continuing reading)

"Q. Mr. Gurley, just one other question. You discussed the meeting that you had with Mr. Rydin some time prior to June 3rd. Who arranged for that meeting? Did you call him in?

A. Yes."

By Mr. Thompson: What page?

By Mr. Freeman: Page 2444. Then Mr. Thompson cross-examines Mr. Gurley.

(Continuing reading):

"Cross Examination by Mr. Thompson.

Q. With respect to your conversation with Mr. Rydin, at the time that you expressed your preference with respect to who should receive the contract, what was the reasoning? What were the reasons that backed up your judgment that the contract should be awarded to Mr.
612 Keeshin?

A. Well, the reason was a simple one; that in the spring of 1954 the roads had embarked upon a plan to attempt to get another operator, and at the end of the period of time that elapsed between that and the date of the decision, along in June 1956, Mr. Keeshin, as I understood it, was the only one who had a bid in. The others had dropped out. His bid was as good or better and it seemed rather clear to me that if we were going to take advantage of the opportunity to make a change, on which the decision was embarked upon in the spring of 1954, that we either do it then or we would not do it at all.

Q. Well, now, in your discussion with Mr. Rydin, do you recall telling him how you felt about the matter? Did you reason this with him and give him these reasons?

A. Oh, I would doubt that I did. It is not normally a practice for me to think out loud that way.

Q. Well, did you have more than one conversation with Mr. Rydin or was there only one?

A. I should think there were two.

Q. All right. I think you haven't made it clear. What was the first conversation you had with him and to
613 what extent did you discuss the matter with him the first time?

A. Well, in the normal course of events you would ask a fellow what if anything had been going on on a certain matter; how we stand.

Q. Were both of these conversations—you said there were two—close together?

A. Oh, yes.

Q. During the last week preceding June?

A. Oh, they would be fairly close together, yes.

Q. Is it your recollection that he did report back to you?

A. That is my recollection."

By Mr. Freeman: This is all examination by Mr. Thompson. (Continuing reading):

"Q. Now, in this second conversation with you, after he reported back to you, will you tell us what he said and what you said, the best you can recall?

A. The second conversation was the one I referred to which I tried to describe earlier. I was adressing myself more to the second conversation than the first. The first conversation was a question of interrogation.

Q. Tell us the best you can what you conversation
614 was. See if you get it complete as to what you said and as to what Mr. Rydin said in this second conversation.

A. I don't know what I can tell you, Judge, precisely what he said. I have said the sort of a conversation it was. The gist of it was as I have said earlier in response to your questions, Mr. Freeman.

The one fellow remaining in the bid was Keeshin and his bid was as I have described it and that is the gist of it. Now, what he said and what I said, I couldn't do that, I am sorry to say.

Q. Well, anyway, as I understood your statement, then, at the conclusion of your conversation, whatever it was, you told him you figured that Santa Fe ought to vote for Keeshin.

A. That is correct. I wasn't talking about anybody else.

Mr. Thompson: That is all."

By Mr. Freeman: Then I continue with redirect examination.

"*Redirect Examination by Mr. Freeman.*

Q. Mr. Gurley, would you just try to recall everything that was said at the first conversation and will you
615 try to place the date of it if you can?

A. Well, the date of it would be some time in the latter part of the spring of 1955. Both conversations would take that broad classification. The first was a request to be brought down to date on where things stood and all that sort of thing. That was about all there was to that first conversation. The second conversation was as I have outlined it in answer to the direct questions of counsel.

616 Q. Why did you ask Mr. Rydin to bring you down to date?

A. He was the logical man to ask, I thought.

Q. Was he the vice-president in charge?

A. He was the vice-president in charge of the executive department.

Q. Under which vice-president did the matter of passenger traffic fall?

A. Well, Mr. Duffy.

Q. And under whose jurisdiction did the matter of negotiations of the Chicago transfer contract fall?

A. Well, that would fall both ways. It is with reference to the traffic department and Mr. Rydin—that is, the negotiations would fall within the traffic department. They would handle the direct across-the-table negotiations.

Q. Is Mr. Rydin your representative on the board of directors of the Railway Express Agency?

A. Yes.

Q. Did he report to you on a conversation he had with Mr. Capri?

A. No. I am assuming again.

Q. On the transfer situation?

A. No.

617 Q. Is that all you can recall of this first conversation with Mr. Rydin?

A. That's all I can recall on the first and second conversations."

By Mr. Freeman: That was the end of the deposition. I have offered the exhibits and they have been excluded.

By Mr. Thompson: Just a minute, please, Mr. McConnell.

Will Mr. Gurley take the stand, please?

FRED G. GURLEY, called as a witness herein on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Redirect Examination by Mr. Thompson.

Q. State your name, please.

By Mr. McConnell: Wait a minute. I object to calling a witness in our side of the case.

By Mr. Thompson: I have got a right to redirect a witness after they have examined him on adverse examina-

tion, and they have examined him by reading a deposi-
618 tion, and I have a right to ask him questions.

By The Court: You may proceed. Objection overruled.

Let the record show that he is being called for redirect on the testimony offered so far.

By Mr. Thompson: That is right.

By Mr. Thompson:

Q. State your name, please.

A. Fred G. Gurley.

Q. What is your residence address, Mr. Gurley?

A. 180 East Delaware Place, Chicago.

Q. And your business address?

A. 80 East Jackson, Chicago.

Q. Were you in the court room during the reading of the deposition by the plaintiff's attorneys?

A. Yes, I was seated here.

Q. In connection with that testimony, I want to ask you a few questions.

Had you at any time during this period that we are talking about in 1955 had any conversation with any president of any of these other railroads respecting their attitude toward the transfer contract here in Chicago?

619 A. No, it so happens that I did not.

Q. Had you any information that there had been any conversations by any of these presidents with respect to the transfer contract with anybody?

A. No, I had no information on it whatsoever.

By Mr. Freeman: Excuse me, Mr. Gurley. I think these questions are perfectly appropriate except that we have been restricted from putting them and getting answers to them.

If Mr. Thompson is now seeking to go into the question of whether Mr. Gurley knew of Cross' contacts with

presidents or whether there were any conversations that he had with Mr. Cross, I think that is fine, but I think that should open the door for both of us.

By Mr. Thompson: I object to the statement of counsel.

By The Court: Objection sustained.

By Mr. Thompson: He is making an assumption which has no bearing or any relation to the questions I am now asking.

By The Court: I have permitted in your deposi-
620 tions and in your testimony you to bring before the jury any conversations or conferences with presidents of any companies. I have not excluded that.

By Mr. Thompson: That is all I am asking.

By Mr. Freeman: Mr. Thompson's question was did Mr. Gurley know of any conversation that another president had with anyone. The inference was clear. He didn't want to mention the magic name, but it was there.

My question to you is, I don't want to object to that question, we think it is appropriate to be presented before the jury, but I think counsel must be consistent. If he has objected to the questions that we put in that connection, how can he now stand and put the same questions and the answers?

By The Court: If the answer is "Yes," I will exclude the conversations with people, the same as I have with you.

By Mr. Thompson: The witness has answered that he had no knowledge of any other president's conversations with anybody.

By Mr. Thompson:

621 Q. In other words, the subject had not been discussed between you and any other president of any other railroad?

By Mr. McConnell: I object to that. He is cross examining his own witness.

By The Court: He has answered that. He said "No."

By Mr. Thompson: All right. If he did.

By The Court: Pardon?

By Mr. Thompson: I say if he did. I don't remember that.

By The Court: The first question you asked him was just that. Wasn't it, Mr. Witness?

By The Witness: Well, I rather think so. I confess I got a little lost in this colloquy here.

By Mr. Thompson: Well, the Judge has said it has already been answered. I didn't think it had been, but maybe it has. I am not going to question it.

By Mr. Thompson:

Q. Now, you have stated in your deposition that was read that you, of course, could not fix a date when a particular conversation occurred and that you couldn't state
622 the exact words that were said in these conversations you had.

By Mr. McConnell: I object to his summarizing the previous testimony of the witness.

By The Court: Objection sustained.

By Mr. Thompson:

Q. Do you have any recollection—is there any way for you to more definitely fix the time when you made these inquiries with respect to the status of this railroad transfer contract?

A. Well, I doubt it. The passage of time hasn't helped my recollection very much. I will confess that.

Q. You said you had more than one conversation with Mr. Rydin. Can you indicate the time that elapsed between your inquiry of Mr. Rydin in the first instance and your inquiry in the second instance?

A. Well, it would be a matter of days, but I wouldn't attempt to put too much time on it.

Q. Do you recall what Mr. Rydin reported to you at the time of your first inquiry?

By Mr. Freeman: I object to that. This was already asked by Mr. Thompson at the deposition without any restriction.

623 By The Court: I believe so.

By Mr. Freeman: I read these questions into the record that were asked that Mr. Thompson put to this witness.

By The Court: He may answer again.

By The Witness: Will you read the question?

(The record was read as above recorded.)

By The Witness:

A. No; I don't know that he made much of a report at the time of the first inquiry. The first inquiry was one of mine to have him find out, if he didn't already know, just how things stood. I don't recall that he made much of a report at the first conversation.

By Mr. Thompson:

Q. Well, do you know whether or not the matter was still under consideration at the time he made his first report?

A. Oh, yes, I beg your pardon. Certainly.

Q. Do you recall anything else he reported other than that?

By Mr. Freeman: He already answered that ques-
624 tion.

By the Court: He may answer.

By the Witness:

A. No, I don't recall much more than that.

By Mr. Thompson:

Q. Now, then, the second conversation you had with Mr. Rydin, was that also in response to an inquiry you made of Mr. Rydin?

A. Correct.

Q. And have you given us all the recollection you have of that conversation you had with Mr. Rydin at this second time?

A. I have.

Q. There was some reference made to a document of September 22, 1950, in your file. Will you look at this document which I will have marked as Defendants' Exhibit No. 2 for identification; and is that the document to which reference was made, the 1950 document?

A. Judge, I am not clear about your question. Do you mean is this letter dated September 21 the one to which mention was made in my deposition?

Q. Yes.

A. Well, frankly, I don't remember. I cannot answer that. My memory doesn't hold on it.

Q. Well, what does that red stamp signify, if anything?

A. "President's Office, Santa Fe Railway System, September 22, 1950, File 155-M."

By Mr. McConnell: I object to reading this, the documents which are in evidence.

By the Court: Overruled.

By Mr. Thompson:

Q. Does that document or does that mark indicate that it had your attention, that is, that you saw it?

A. Well, the probabilities are that I did. My check mark is not on it, but that is not necessarily significant.

By Mr. McConnell: Can we have these documents identified so we know what we are talking about here?

By the Court: Yes, certainly you may.

By Mr. McConnell: I mean identified with a mark.

By Mr. Thompson: I have already said I would have them marked, and I will have it done right now. Mark this Defendants' Exhibit No. 2 for identification, and
626 this as Defendants' Exhibit No. 3, for identification.

(Thereupon the said documents were marked Defendants' Exhibits 2 and 3 for identification.)

627 By Mr. Thompson: This is a two-page document. The date of this is September 5, 1950.

By Mr. Thompson:

Q. Will you examine that and see if it refreshes your recollection that that was brought to your attention?

By Mr. Freeman: I don't understand that question, Mr. Thompson. Could you be a little more specific what you are trying to get from the witness?

By Mr. Thompson: I thought the question was perfectly clear.

Read the question, please.

(Thereupon the record was read as above recorded.)

By the Witness:

A. The subject matter was. I am not so sure about the written memorandum coming to my attention.

By Mr. Thompson: Here is another document which I will have marked as Defendants' Exhibit No. 4, for identification, which consists of two related documents, one a memorandum dated August 31, 1949 and the next one dated September 1, 1949.

628 (Thereupon said documents were marked, respectively, Defendants' Exhibit No. 4 for identification.)

By Mr. Thompson:

Q. I ask if you recall receiving that document addressed to you?

A. Yes, I recall this one. This has my initials on it. I remember that quite clearly.

Q. And it was transmitted to you in the regular course of business of the Santa Fe Railroad?

A. That is correct.

Q. And it was the regular course of business of the Santa Fe to have transmitted to you memoranda on these subjects that refer to railroad business?

A. Yes, either written or verbal, both ways.

Q. At the time that you reached your decision as to how the Santa Fe should vote on the matter of awarding this contract, what were the considerations that prompted you to reach the conclusion that you did?

By Mr. Freeman: I object to that. He has already stated what he said to Mr. Rydin when he came to his conclusions. I don't think we can go into this kind of introspection at this time.

629 By the Court: Objection overruled. He is the one who made the decision.

By Mr. McConnell: You wouldn't let us go into the other end of it. Now you are going to let this man give his—

By the Court: I didn't let somebody interpret somebody else's decision. He made the decision. I had no such ruling in your case.

By Mr. McConnell: We tried to show—well, never mind. I have made my record on it.

By the Witness:

A. Well, I thought it was a rather simple proposition, and I thought primarily, of course, that I was under obligations to no one, that I could decide with whom we wanted to make a contract which seemed to be a prerogative of mine, I thought, and our group had a year and a half or so before that got around to the point where they wanted to try to get some other operator, and it had

finally got to the point where another operator gave them a bid which, according to the advice given me, was as good or better, and, as I stated on my deposition, I thought that having embarked upon the course that
630 the group embarked upon, that there probably would never come a time when you could do what they set out to do unless you did it at the time.

That is a very simple line of reasoning, because I thought that—well, if you don't change now, you never will.

By Mr. Thompson:

Q. Had you been aware of the labor difficulties that were recurring with respect to the Parmelee operations?

By Mr. McConnell: That is not proper redirect, your Honor. There is nothing in the direct about labor difficulties.

By the Court: Overruled.

By the Witness:

A. Well, I knew about the strikes. Some of them at least I recall, some of it. Some of the information there had reference to the strike in 1950. There had been some other labor difficulties. I am not too clear about those.

By Mr. Thompson:

Q. Were you aware—

By Mr. McConnell: And I move to strike it all out as hearsay.

By the Court: I didn't hear that.

631 By Mr. McConnell: I move to strike it all out as hearsay.

632 By the Court: I think that is a good objection. Objection sustained.

By Mr. Thompson: Well, the information he had about the 1950 strike, there is no hearsay about that.

By the Court: The first one—well, let him state what information he had.

By Mr. Thompson:

Q. What knowledge did you have about this labor difficulty?

By Mr. McConnell: I object to it unless we have a conversation with somebody where we are present. He is going to try to bind us on something he heard from some other source, and it is obviously hearsay.

By the Court: Overruled.

By Mr. Thompson: It isn't necessarily something he heard if he could see what happened.

By the Witness:

A. I have a clear recollection of the 1950 strike. There is nothing mysterious about that.

By Mr. McConnell: I move to strike out his characterization—"nothing mysterious."

633 By the Court: Overruled.

By Mr. Thompson:

Q. Do you remember how long the strike lasted?

A. Five weeks. That is about all I can recall.

Q. What made the difference in the character of service that was promised to be rendered by the Keeshin Company and which has been rendered since the contract was awarded?

By Mr. McConnell: I object to this. This is in his main case.

By the Court: Overruled.

By Mr. McConnell: This is not proper redirect examination.

By the Witness:

A. Well, as to the service which has been rendered, I think it might more properly be addressed to one who has been in a little more active service than I. The promise was for good service, but I think some of it, some of the continuing people could answer you better than I on what had actually taken place. I have been retired for some little while.

Q. Well, have you observed the character of the vehicles that are being used?

A. Yes, I have seen that, of course, as a matter of
634 observation.

Q. How did they compare with what were used prior to the time of the change of service?

By Mr. McConnell: I object to that as not proper redirect examination. I also object to it unless we have when he was there, what he saw, a time and place fixed.

By the Court: Objection overruled.

By the Witness:

A. Well, they were of a different type. They seemed quite all right to me, quite good.

By Mr. Thompson:

Q. Do you mean the new ones?

A. Yes, and they were new, more modern, of course, purchased later.

Q. Do you know anything of your own knowledge about the dispatching of service from one station to another?

A. No, I do not.

Q. Or about air conditioning or any of the other physical properties?

A. No, I do not know about that.

By Mr. Thompson: That is all.

By Mr. McConnell: May we have a recess now?

635 By the Court: Yes, we can recess for lunch. Have a nice lunch and don't discuss the case with anyone, and come back at 2:00 o'clock.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: 2:15 for the lawyers.

By Mr. Thompson: Do you have preliminaries?

By the Court: I have a preliminary motion, a short one. 2:15, please.

(Whereupon a recess was taken to 2:15 o'clock, p.m., of the same day, April 27, 1960.)

636 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Wednesday, April 27, 1960,
2:15 O'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

637 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

638 By the Clerk: Case on trial.
By the Court: Bring out the jury.

(Whereupon, in the presence and hearing of the jury the following proceedings were had:)

By the Court: Good afternoon, ladies and gentlemen. All right, gentlemen, proceed.

By Mr. McConnell: We would like Mr. Gurley back on the stand, your Honor.

FRED G. GURLEY, having been previously duly sworn, resumed the stand and testified further as follows:

Recross Examination by Mr. McConnell.

Q. Mr. Gurley, you spoke this morning about some group that you had reference to where you were thinking about making a change from Parmelee, and you now thought this would be a good time to do it.

What group was that?

A. Well, I guess the word group is as good a word — why, it was the Chicago Terminal Lines group, sticking to the word group, who set out in early 1954 to see about other bids and that sort of thing, trying to get other bids.

Q. Who composed the Chicago Terminal Lines group?

639 A. Oh, it would be practically all of the Chicago railroads. I think you would except from that certain small railroads, but by and large, the railroads serving Chicago.

Q. Would it be the group of 21 railroads which were coming in or going out of Chicago?

A. I think that would probably be correct, yes, but I say again, I think perhaps, though don't hold me too close to this, that one or two of those would not have any interest in this particular affair.

Q. Did you have representation — I don't mean you personally, but your company?

A. Oh, surely.

Q. You had representation on that group?

A. Yes.

Q. Now did that group discuss back and forth between themselves what was to be done about this transfer business, so far as you know?

A. Well, certainly they discussed among themselves what to do about bids from other companies, and they would be the ones who would discuss among themselves the satisfaction or dissatisfaction, or things of that sort about it.

640 Q. Now I understand your company was represented on a smaller group, a so-called sub-committee.

A. Yes.

Q. To deal with this transfer problem.

A. That is correct.

Q. What railroads were represented on that group?

A. Well, I think it was the New York Central, the Illinois Central, Santa Fe, the North Western, and, I think, the Pennsylvania.

Q. Did you mention the Illinois Central?

A. I intended to, if I did not. I think I did.

Q. The Baltimore and Ohio, was that on it?

A. Well, they might have been. I was thinking it was the Pennsylvania, the eastern railroad. Conceivably the Baltimore and Ohio might have been on it. I would not be too sure about that.

Q. The eastern group was the Baltimore and Ohio, Pennsylvania and the New York Central, were they not?

A. I think that is correct.

Q. And the western group was the Illinois Central, your railroad, and the North Western?

A. That is correct. That is what I said, except I was not clear about the Baltimore and Ohio.

Q. On April 29, 1955, did you go down to Wash-
641 ington and attend a meeting of the American Railway Association?

A. No.

Q. Well, did you attend any meeting of that group in the spring of 1955 in Washington?

A. Well, let me go back over that question, please. You say on April 29 did I go down to Washington? Let me go back. Was April 29 a Friday?

I attended a meeting either the 28th or 29th at Washington. If Friday was the 28th, I was there.

642 Q. I don't know, Mr. Gurley, whether it was Thursday or Friday, or what day of the week it was, somewhere around that time being good enough for me.

A. That is right; I attended a meeting of the AAR. April 29th?

Q. Yes.

A. Oh, no, I did not.

Q. That was a meeting held in Washington?

A. Yes. I did not attend that meeting.

Q. Did you attend any meeting held in Washington?

A. Yes.

Q. Of that association?

A. Yes. In April?

Q. Well, in April or May.

A. In May I did. April I did not.

Q. Did that organization meet the last Friday of every month?

A. That is the routine meeting date.

Q. And you think you were down there at the May meeting?

A. There is no question about that.

Q. That would be along about the 27th of May, wouldn't it? I don't want to hold you too closely, but the

last Friday of the month?

643 A. Yes, that is right.

Q. Do you know Mr. Wayne Johnston who was the president of the Illinois Central at that time?

A. Yes.

Q. He was down there at that time, wasn't he?

A. Well, I suppose so, but I have no clear recollection as to who attended the May meeting.

Q. Didn't you go down with him on the train?

A. Oh, no.

Q. You don't recall whether you met him there?

A. I do not.

Q. Do you recall whether you met Mr. Perlman of the New York Central there at that time?

A. I do not recall who was at that meeting.

Q. Do you recall having any discussion at that time about the Chicago transfer matter?

A. I do not. There was none.

Q. Well, I don't mean just a meeting, but while you were there in Washington.

A. My same answer would apply.

Q. All right. Did you at any time in the spring of 1955 hear a statement to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract?

644 By Mr. Meserow: Objection to the question, your Honor.

By the Court: Objection sustained.

By Mr. McConnell: This goes right to the point of what was in his mind at the time this contract was granted.

By the Court: Objection sustained.

By Mr. McConnell:

Q. I show you a document which is marked for identification as Plaintiff's Exhibit No. 20, which purports to be an affidavit or a copy of an affidavit subscribed and

sworn to by you under date of Novemebr 10, before Wilbur L. Camp, a notary public of Cook County, Illinois; and I will ask you if you will examine that document and tell me whether or not you executed the original of it? (Exhibit handed to the witness.)

A. I did.

Q. I show you a document which has been introduced here in evidence as Plaintiff's Exhibit No. 9, which purports to be a memorandum under date of Chicago, May 23rd, 1955, under the subject of Parmelee Transfer at Chicago, signed R. T. Anderson, and ask you whether or not you ever saw the original of that document.

645 A. I have seen this document. I would not make the distinction as to the original, but I have seen the document.

Q. Did you see that document prior to the the time that your company, the Atchison, Topeka and Santa Fe Railroad, indicated a vote in that subcommittee for Mr. Keeshin's company on this transfer business?

A. I did not.

Q. Prior to that date that I have mentioned and described to you, did you know—

By Mr. McConnell: I will withdraw that.

By Mr. McConnell:

Q. First, who was Mr. R. T. Anderson in your company?

A. Mr. R. T. Anderson was the general passenger traffic manager of the Santa Fe.

Q. Prior to that time did you know from any source in your organization, and the time I am speaking about is the time I just described to you, that Mr. Anderson had stated that, "There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago terminal lines. We propose to recommend the continuance of our arrangement with Parmelee be-

cause of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals."

646 Do you have the question in mind now, or do I have it confused?

A. Well, I think I have your question. I knew that this vote was coming up, but I could not answer you as knowing it tied to the date of that letter. I do not — I could not do that.

647 Q. Well, that isn't quite my question.

A. I thought it was.

Q. My question is whether you knew that Mr. Anderson had made a statement that your company proposed to recommend the continuation of the Parmelee contract for the reasons that he stated in this memorandum.

A. I don't think that would be correct, because Mr. Anderson would not be authorized to state quite the way you do. He would be authorized to state his recommendation, and I knew that Mr. Sloan favored the continuation of the contract with Mr. — I keep calling it Mr. Parmelee — with Parmelee, but the condition of the company would not be announced quite the way you put it.

Q. Well now, it isn't what I put, Mr. Gurley. It is what Mr. Anderson said. He said, and I am quoting, not using my language:

"We propose to recommend the continuation of our arrangement with Parmelee because of of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals."

648 What I am asking you, Mr. Gurley, is whether or not you knew that your company proposed to continue this arrangement.

A. Well, the distinction I make with you, sir, and I must make it, is the distinction between the recommenda-

tion of one of our officers and the position of the company. I have no hesitancy in saying that I knew that Mr. Sloan favored that.

649 Q. Well, did you know that Mr. Anderson favored it?

A. I don't recall that I did.

Q. Did you know prior to this time that the Parmelee Company had made a proposal?

A. Oh, yes.

Q. Did you know prior to this time that the Parmelee Company had proposed to spend $500,000 on new equipment?

A. I don't recall that I knew the precise amount. I knew that new equipment was a part of the proposal. The amount I don't recall having specifically in mind.

Q. Did you know that Mr. Keeshin had proposed as a rate for the coupon $1.20 for the first year, $1.22 for the second year, and $1.23 for the third year, and the coupon rate for the fourth and fifth years to be increased one cent for each three cents of wage increase?

A. I do not recall that I knew those dollar and cent figures that you quote, no, sir.

Q. Did you know that Mr. Markin had submitted a proposal of $1.20 for transfer of passengers and baggage effective July 1st, 1955, with an increase of one cent in the coupon rate for each three cents of wage

650 increase with a maximum of a five-cent increase over the five-year contract, and a maximum coupon rate in each year as follows:

July 1st, 1956, $1.22; July 1st, 1957, $1.23; July 1st, 1958, $1.24; July 1st, 1959, through June 30, 1960, $1.25.

A. I would make approximately the same answer to that as I did before. I did not have those dollar and cent graduating scale coupon rates in my mind.

Q. Well, did you know this much about it, that in the Markin or the Parmelee proposal there was an absolute ceiling on how much could be charged in any single year under this proposed agreement, and in the Keeshin proposal there was no ceiling on two of those years?

By Mr. Meserow: I am going to object to the question unless counsel fixes the date of the Markin proposal. There were several, and I would like to have him fix the date.

By Mr. McConnell: The last proposal, the one referred to in this letter of May 23, 1955.

By the Witness:

A. Well, the answer to your question, briefly, is 651 no, as I think I testified earlier. I knew —

Q. All right. That is the answer. That is all I asked, whether you knew it.

A. I did not know that detail.

Q. Yes, that is what I am asking.

A. That is right.

Q. Did you know or have you learned from any source that during the continuance of the Keeshin contract, which is now in force, as I understand it, that the coupon rate has actually gone to $1.27?

A. No, I do not know that. I would like to make —

Q. If you don't know, that is all I asked you.

A. O.K.

Q. Now this Mr. Anderson, R. T. Anderson, is he still employed by your company?

A. Oh, yes. I believe he testified in here yesterday.

Q. Yes, I know he testified. I didn't remember whether he was still there or whether he had gone, whether he was getting the sort of rest that you are getting and that I hope to get.

A. He hasn't gotten there yet.

Q. Is he a competent man?

A. Yes, Andy is quite a capable fellow.

Q. Now he states, and I don't know whether he is
652 using the editorial "we" or not, and I am just quoting his memorandum. He says:

"We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition we will avoid the possibility of labor trouble in connection with operation by a new company with different union."

Now, would you say that this sort of a recommendation would be one which should be given consideration and weight by you if you had it before you?

A. Well, any recommendation of your staff should be given consideration and weight, and that would include this one.

Q. All right, but you didn't have it before you.

A I did not have that detailed language in front of me, no, sir.

Q. You didn't have the proposal before you either, did you?

A. You mean the specific—

Q. I don't mean the proposal. I don't know why I
653 can't say the right word. I mean that memorandum.

A. That is correct.

By Mr. McConnell: I have no further questions.

By the Court: All right.

654 *Redirect Examination by Mr. Thompson.*

Q. At the time you were called upon to make the decision, around the 2nd of June, did you have knowledge that the two bids were substantially the same? Was that information conveyed to you by Mr. Rydin?

A. Precisely.

By Mr. McConnell: I object to that. That class for counsel's conclusion. Whether they were substantially the same is a jury question.

By Mr. Thompson:

Q. What did Mr. Rydin say about it?

A. He said they were substantially the same.

Q. And do you have in mind anything further now that entered into your consideration of why the change should be made if they were substantially the same?

By The Court: You mean besides those he has given this morning?

By Mr. Thompson: Yes.

By The Witness:

A. Well, I don't recall precisely all I gave this morning, but I had in mind the dissatisfaction, if that is the phrase, with reference to the relationships with
655 Parmelee about prices and about opening his books and those things which caused the attempt to try to get competitive bids. I had that in mind, of course. I attempted to cover that this morning, that there was a dissatisfaction in the early part of 1954.

Q. You mentioned that Mr. Sloan was the man who was active on this committee. Did Mr. Anderson have anything to do with it except assigning Mr. Sloan to it, or do you know?

A. Well, I have an understanding, but I couldn't express definitely the relations between Mr. Anderson and Mr. Sloan. I have an understanding, but that is the best I can say to that.

Q. Well, in the protocol of the railroad industry, if I may so express it, would a memorandum from Mr. Sloan to the vice-president be one coming through you under Mr. Anderson's name, his superior?

A. Yes.

Q. And Mr. Sloan would not sign himself a memorandum he was sending to the vice-president?

A. That is correct.

Q. And if a communication came on to you, from whom would it come?

A. It would come through the vice-president.

656 Q. And that is Mr. Duffy?

A. Mr. Duffy and/or Mr. Rydin, as the case might be.

By Mr. Thompson: That is all.

By Mr. McConnell; Just one other question.

Recross Examination by Mr. McConnell.

Q. I show you a document which is marked for identification Plaintiff's Exhibit 7—

By Mr. Freeman: It has been admitted.

By Mr. McConnell: Yes, it has been received in evidence.

By Mr. McConnell:

Q. (Continuing) —which is a memorandum under date of February 15, 1955, dated at Chicago, "J. L. S.," I take it that is Mr. Sloan, addressed to Mr. R. T. Anderson, with reference to the subject "Transfer Arrangements."

I ask you whether or not you ever saw that document before.

A. Yes, I have seen that document.

657 Q. All right. Now this morning, Mr. Gurley, you told us that you didn't know what the attitude of the other railroads was, or at least, the railroad presidents. Now I ask you whether or not you knew the attitude of the other railroads on this question.

A. Well, I don't know that I did know.

Q. Now I want to call your attention to this, and I am reading from the document which is in evidence. I am reading from the last paragraph of this letter:

"Mr. Bone thinks that we should go very slow on any change in operators—"

And he is referring to the transfer arrangements in Chicago.

Now, who is Mr. Bone?

A. Mr. Bone, as I understand it, is the representative here in Chicago of the New York Central.

May I supplement my answer to you a while ago, sir?

By Mr. McConnell: Well, all I asked you is who Mr. Bone was. If your counsel wants to ask you anything else, that is all right. I haven't any further questions.

By Mr. Thompson: Go ahead and supplement whatever you want to supplement.

658 By The Witness: Well, you asked me if I had seen that document. I have. I had not seen it prior to my instructions on the matter. I have seen it. That was your question.

By Mr. McConnell:

Q. But your answer to Mr. Thompson this morning was that you didn't know what the other railroads were doing on this matter, wasn't it?

A. Yes, and I say to you now, I did not see that exhibit No. 7, or whatever it is, until later. But you asked me if I had seen it, and I said yes.

Q. But it was written by a member of your staff in your company prior to the time this thing was decided, isn't that right?

A. Yes, but I didn't see it.

By Mr. McConnell: All right. I have no further questions.

Redirect Examination by Mr. Thompson.

Q. Now, do you find anything in this document, Mr. Gurley, that says what the other railroads think about whether there should be a change in the operators?

By the Court: Are you now referring to the same 659 document, Judge?

By Mr. Thompson: The same document, Plaintiff's Exhibit 7.

By the Witness:

A. Well, this memorandum here contains this statement, "Mr. Bone thinks" so-and-so. Now, Mr. Bone is the representative of the New York Central.

By Mr. McConnell: That is right.

By Mr. Thompson:

Q. And you knew nothing about what Mr. Bone thought at the time?

A. That is the point I want to make very clear with you.

Q. And you knew nothing about what any of the rest of the railroads or their representatives thought?

A. That is correct.

Recross Examination by Mr. McConnell.

Q. But somebody in your organization knew what Mr. Bone thought about it, isn't that right, and it is so noted in the memorandum?

A. Well, the memorandum speaks for itself, sir. All I am trying to say to you is that I did not see this memorandum at the time I made my decision, and it 660 was that I had in mind this morning in saying to Judge Thompson I did not know the attitude of the other railroads. Goodness gracious, we have all had an opportunity to find that out since.

Q. I call your attention to the statement in the document which has been referred to as Plaintiff's Exhibit 7,

in which your Mr. Sloan writes to Mr. Anderson, under date of February 15, 1955, and in which it is stated:

> "Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

Now that committee—tell me, what committee is referred to there, if you know.

A. Well, I assume it is the same committee we referred to a while ago, those railroads we enumerated.

661 Q. The Committee of six railroads?

A. I think that would be a fair assumption.

Q. Well, anybody reading this letter would know the view, then, of at least six railroads, wouldn't they?

A. I don't know.

Q. Well, you read it now and you tell us.

A. O.K.; I will read it.

Well, all I can say is, I have to quote from it.

> "Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless the bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

I find that in the letter.

Q. Who was Chairman Padrick, by the way?

A. Well, Chairman Padrick is the chairman of an association, without being too precise about it, The Western Passenger Lines.

Q. Was he at any time chairman of the group of six?

A. I don't know, but I don't think so. I am not

662 sure, but I don't think so. I would like to change that.

Q. I call your attention to a memorandum addressed to you, not to you, to Mr. Duffy, under date of January 7, 1955, from Mr. Anderson, in which it is stated, and this is in evidence, and I am reading from a document which is in evidence:

> "The committee is still waiting for a proposal from the Willett Company and from Mr. Sid Englehart from New York. When these last two proposals are received, they will be presented, along with the others, to the Chicago terminal lines. However, the committee working on the problem did not feel that a change should be made in contractor unless there is a substantial reduction in price."

Did you ever see that?

A. I think I have answered that. I saw that later.

Q. All right. Is that the group you told us here this morning had decided to get rid of the contractor who was then doing the business?

A. I don't think I said that.

Q. Well, was that the group that you referred to 663 as a group this morning? Let's put it that way.

A. Yes, but—

Q. That is all I asked you.

A. You said that they "decided to get rid of." I don't think they could decide to get rid.

Q. Didn't you say this morning in your testimony that it was the concensus of the group of which your company was one, that there should be a change in contractor, and if they ever were to do it, this was the time to do it?

A. Yes, there was this.

Q. Was that what you said this morning?

A. I don't recall what I said, but if you will allow me, I will tell you now what my understanding is of what I said; that the group, using your word, embarked upon

a plan in early 1954 to secure other bids because of dissatisfaction with Parmelee.

They could not decide at that time to get rid of Parmelee, and if I said that, then I misspoke, if I used the words "get rid of."

They couldn't reach such a decision in 1954. They could reach a decision to seek bids and other things.

Q. You were referring to a decision they made in
664 1954?

A. That is right.

Q. Did you know that their decision, that they had reached a decision that the committee working on the problem did not feel that a change should be made in contractor unless there was a substantial reduction in price? Did you know they made that decision as late as January 7, 1955?

A. Well now, the vote of the Committee of six was sometime later than that, sir.

Q. I didn't ask you a thing about a vote. I asked you whether or not you knew they had reached the decision as set forth in this letter of your man Anderson to Mr. Duffy.

By Mr. Keating: I object to that. This document Mr. McConnell is referring to has only been admissible to the Santa Fe. Now Mr. McConnell is trying to create the impression it speaks for all six railroad defendants.

665 By Mr. McConnell: You were trying to create the impression this man didn't know anything about any other railroad, about what any other railroad did, and here it is right in the middle of it.

By the Court: He has answered it. He said he didn't see the document until later.

By Mr. McConnell: All right; that is all I have.

By Mr. Thompson: A couple more questions.

By the Court: We had better put a zipper on this. Go ahead.

Redirect Examination by Mr. Thompson.

Q. Mr. Gurley, this document to which reference has just been made, which is Plaintiff's Exhibit No. 7, for identification—

By Mr. McConnell: No; it is in evidence. I beg your pardon.

By Mr. Thompson: I am sorry about that.

By Mr. McConnell: They are both in evidence.

By Mr. Thompson: This isn't the one he was just referring to. What is the one?

666 By Mr. McConnell: No. 6.

By Mr. Thompson:

Q. Referring to Plaintiff's Exhibit No. 6, which is the one counsel was just referring to, you notice the date of that is January 7, 1955?

A. I notice that, yes, sir.

Q. Did you know that the only bid then before the group was the bid of Mr. Keeshin of December 15, 1954?

A. I did not.

Q. Did you know that the bid of Mr. Markin, which is for the Parmelee Company, was not even received by the committee until March 15 of 1955?

A. I had forgotten the date. To answer your question, no.

Q. And this other document, which is marked Plaintiff's Exhibit No. 7, is dated February 15, 1955. You didn't know of course when you saw this—I mean when you were making your decision, that the bids of Keeshin were in, in December and January, whereas the bid of Markin didn't come in until March?

A. I did not know those dates.

Q. And you didn't have these documents before you at the time you made your decision?

A. That is correct.

667 By Mr. Thompson: That is all.

By Mr. McConnell: I have no further questions. You can catch a train.

(Witness excused.)

By Mr. Thompson: Mr. Nelson.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and address?

A. Stanley F. G. Nelson, 14236 Clark Street, Riverdale.

Q. Do you have a position with the Baltimore and Ohio Railroad?

A. I do.

Q. What is that position?

A. Assistant general passenger agent.

Q. Did you hold that position in 1955?

A. I did.

Q. Were you the member of the Baltimore and Ohio Railroad who attended the meetings of the Chicago Terminal Lines?

668 A. That is right.

Q. In 1955 were you a member of the committee of six that had been established in 1954 to negotiate with respect to a transfer contract?

A. That is right.

Q. Do you have any individuals under your control in your department?

A. Well, I have the general office.

By Mr. Freeman: I would like to examine Mr. Nelson as an adverse witness of the Baltimore and Ohio Railroad, a managing agent.

By Mr. Thompson: We object to that. He is not a managing agent, and there is no foundation showing he is a managing agent. He has no authority to made decisions for the Baltimore and Ohio as far as any showing made now.

By Mr. Freeman: He is in the same position as Mr. Quackenbush.

By the Court: I will give you leeway.

By Mr. Freeman:

Q. Mr. Nelson, did you attend various meetings of the negotiating committee and of the Chicago Ter-
669 minal Lines in 1954 and 1955 looking towards negotiations for the Chicago transfer contractor?

A. I did.

Q. Did you prepare memoranda of what transpired at those meetings?

A. To the best of my ability as to what happened.

Q. What was the purpose of these memoranda?

A. To keep our headquarters office in Baltimore informed as to what was occurring.

670 Q. Was this the normal procedure in your railroad for you to prepare memoranda for the files and for Baltimore's advice?

A. That is right.

Q. Was this the regular procedure, if you know, of the other committee members?

By Mr. Thompson: We object to that. He couldn't know.

By the Court: Objection sustained, to the form.

By Mr. Freeman:

Q. Do you know whether or not the other committee members similarly kept memoranda of the meetings?

By Mr. Thompson: We object to that.

By the Witness:

A. I wouldn't know.

By the Court: He said he wouldn't now.

By Mr. Thompson: He is not qualified to answer.

By Mr. Freeman:

Q. Mr. Nelson, approximately what percentage of the total transfer business did the Baltimore and Ohio handle in 1954 and 1953 and 1955?

A. I don't have those figures.

671 Q. Would it be less than 5 per cent of the total?

A. I think about 5 per cent, thereabouts.

Q. In other words, the Baltimore and Ohio was not one of the major companies that received transferring passengers under this system?

A. Well, we considered ourselves one.

Q. It was 5 per cent?

A. As I say, I don't know the figures, but we considered ourselves one of the major lines involved in the transfer.

Q. Do you know who was the major line, the major receiving line?

A. Either the North Western or the New York Central.

Q. Did you estimate, to the best of your ability, that the percentage of transfers that you received and paid for were approximately 5 per cent; did I understand that testimony?

By Mr. Thompson: His answer was he didn't know.

By Mr. Freeman:

Q. You do not know?

A. I do not know.

Q. Well, we will straighten that out now.

Mr. Nelson, I show you a memorandum, that I

672 will have identified as Plaintiff's Exhibit No. 23, consisting of one page.

(Thereupon said document was marked Plaintiff's Exhibit No. 23 for identification.)

By Mr. Freeman:

Q. I ask you whether this memorandum was prepared by you and is in your handwriting.

A. That is right.

Q. Was this memorandum prepared at one of the meetings of the Chicago Terminal Lines, namely the one held on June 13th?

A. That is correct.

By Mr. Freeman: I offer in evidence the document that has been marked as Plaintiff's Exhibit No. 23.

Is there any objection? I offer it.

By the Court: Is there any objection?

By Mr. Thompson: I don't know what all these figures are.

By Mr. Freeman: I will ask the witness as soon as I get it in.

By the Court: I will reserve my ruling. Proceed. You may inquire about it.

673 By Mr. Freeman: Thank you.

By Mr. Freeman:

Q. Does this document attempt to set forth the percentage of the transfer traffic handled by the railroads indicated on the exhibit?

A. It does.

Q. Does it show the percentage of transfer coupons paid for by the Baltimore and Ohio Railroad?

A. It does.

Q. Does it show their percentage as 4.37 per cent?

A. That is correct.

Q. Will you tell us how many railroads in that group have a percentage of transfer traffic in excess of 4.37 per cent, if you will just count them up to yourself and give us the number.

A. Seven.

Q. What percentage does the New York Central have?

By Mr. Thompson: If the Court please,—

By Mr. Keating: Your Honor, I object to the form of the question.

By Mr. Freeman: Your Honor, I object to the form of the question.

By Mr. Freeman: I withdrew that question, and I again offer the document in evidence.

By Mr. Thompson: If the Court please, there is no indication of the source of this information. Nelson
674 says he made these notes, but whether somebody was reading them off to him or where he was getting them, I don't know anything about it.

By the Court: It may be received against him and his company but not against the others.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 23.)

By Mr. Freeman: That is good enough for the time being.

675 By Mr. Thompson: I don't know where he got his information.

By Mr. Freeman: You may ask him about that.

By Mr. Owens: Part of the foundation he would have to lay would be that he would have this knowledge himself. If you are making a memo of knowledge he had at that time, then it might be binding upon him. This is merely a memo of something that occurred at a meeting—

By the Court: Prepared by him, and it is a matter of defense and not a matter for them to establish.

By Mr. Freeman: My principle purpose is to establish the percentage of the Baltimore and Ohio Railroad, and that is his knowledge.

By the Court: Proceed.

By Mr. Freeman:

Q. Mr. Nelson, during your tenure up through 1955 did you find any memoranda in your Baltimore and Ohio files either prepared by you or anyone in the railroad which reported critically with respect to Parmelee's 676 service or equipment?

By Mr. Thompson: We object to leading the witness.

By Mr. Freeman: I have a right to.

By Mr. Thompson: You have no right to, because it doesn't come within the statute. We object to cross examination of the witness.

By Mr. Owens: He is seeking negative answers, your Honor. There is no evidence this man made a complete examination of all the records.

By the Court: Has he made a search? Proceed.

By Mr. Freeman:

Q. Well, Mr. Nelson?

A. Of our own files?

Q. Yes, just your own files.

A. There is nothing in the files written, but there may have been oral complaints.

Q. Prior to 1955?

A. Prior to 1955?

Q. Yes.

A. Yes.

677 Q. Did you testify in this case on deposition on January 18, 1957?

A. I did.

Q. Prior to June 1, 1955, do you recall writing any reports or memoranda that were critical of Parmelee's service or Parmelee's equipment?

By Mr. Thompson: If the Court please, objection. It doesn't contradict anything.

By Mr. Freeman: I am asking him.

By The Court: He may answer.

By Mr. Freeman:

Q. I am asking you now whether you wrote a report that was critical of Parmelee's service or Parmelee's equipment prior to June 1 of 1955?

A. I said I had no written critical letters, but I had orally criticized Parmelee's service from time to time and over the course of the years.

Q. To whom did you criticize Parmelee's service?

A. Primarily Mr. Scheeder.

Q. Did you ever make any comments on the condition of the equipment, whether all the vehicles should be replaced or something of that nature?

A. From time to time there was a question of sufficient equipment.

678 Q. No, I ask whether or not you made any comments or, let me restrict the question, made any comments with respect to the condition of the equipment or whether it should be replaced at any time prior to June, 1955.

A. Not that I recall.

Q. When you made suggestions to Mr. Scheeder were those suggestions given prompt attention?

A. They were given attention because I followed through to see that they were. That is part of my job.

Q. Did you ever find the people at Parmelee difficult to deal with?

A. No, because I had very good relations with Mr. Scheeder.

Q. Did you find that when the representatives of Parmelee made any commitment to you that they lived up to their commitment?

A. Again, I must say that when I had a complaint to offer, I made sure that it was corrected.

Q. Did you find that they were difficult to deal with, is my question.

By Mr. Thompson: We object to this as calling 679 for conclusions. It doesn't prove anything.

By The Court: Sustained.

By Mr. Freeman:

Q. All right.

Mr. Nelson, as a member of this negotiation committee, were you of the opinion that it was established solely for the purpose of attempting to reduce the cost of transfer service?

A. Well, originally I would say that was our prime purpose, but as we received these bids, or conversation rather than bid, from these other trucking companies whom we had contacted, we found that maybe there was an angle of service that we didn't quite appreciate, and that the service could be bettered as well as lowered in cost.

Q. I am thinking now of your attitude on this committee prior to June, 1955. Did you have any objective on this committee other than the economics of the cost of transfer?

By Mr. Thompson: We object to it. The witness has answered the question.

By Mr. Freeman: He hasn't answered that question.

By The Witness: I thought I did.

680 By the Court: I think he answered it.

By Mr. Freeman:

Q. Can you remember any discussion of the reason for the committee negotiations and activities other than purely economic?

A. You mean the Committee of Six?

Q. Yes.

A. Originally it was economics, but as time went on we found that there were other aspects that we should look into and that was service and equipment.

Q. I am asking now specifically, Mr. Nelson, if whether at any time during this committee's life up through June, 1955, there was any reason stated other than purely economic.

By Mr. Thompson: If the Court please, he has answered it twice.

By Mr. Meserow: He has answered.

By Mr. Freeman: I am asking specifically to impeach this witness.

By the Court: He may answer.

By the Witness:

A. I still repeat what I have said. Originally it was a question of economics, I grant that. There is no argument there. But as these other companies approached
681 us and we had them in and talked to them, we felt that there were also service angles that we should appreciate.

682 By Mr. Freeman:

Q. Mr. Nelson, I ask you whether on Page 1312 of this transcript, you answered this question as follows:

"Q. Can you remember any discussion of the reason for the committee negotiations and activities?

"A. The reasons were purely economic."

Was that your answer under oath—

By Mr. Thompson: Wait a minute. Finish the answer.

By Mr. Freeman:

Q. (Continuing) "They felt that over the course of years the Parmelee charges were constantly mounting, and we had no chance to review any financial statement to know whether or not those charges were justified or not."

Was that the only reason discussed by the committee throughout its life through June 1955 that you know of?

A. I am afraid I will have to stick to what I have said.

Q. Did you so testify?

683 A. I did.

Q. Under deposition on June 18, 1957?

A. I did, sir.

Q. Now let me ask you a few additional questions in that connection. Was this purely economic reason for the committee the general feeling of all the committee members and the concensus of opinion of all the committee members?

By Mr. Meserow: I object to the question as to how the other members felt. He has no knowledge.

By the Court: The question is did he so testify.

By Mr. Freeman: Did they discuss this and express their opinions with respect to the reasons of the committee. That is my question. You may answer.

By the Witness: Will you repeat that, please.

(The question was read as above recorded.)

By the Witness:

A. They surely did at the meeting. That was the prime purpose of the meeting, was each one to offer

684 his comments and his ideas.

By Mr. Freeman:

Q. No, my question was, was there a discussion among the members of the committee of the reason for the committee activities and did the committee feel and state that it was a question of economics?

A. Yes, they did.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 24 this two-page memorandum which has been coded B&O 106 and 107, dated January 5, 1955.

(Thereupon said document was marked Plaintiff's Exhibit 24 for identification.)

By the Court: We will take a few minutes recess.

(Whereupon a short recess was taken, after which the following further proceedings were had:)

By the Court: Bring the jury out.

All right, proceed.

By Mr. Freeman:

Q. When we recessed, I had identified as Plaintiff's
685 Exhibit 24 this penciled document, two pages.

Now I ask you, Mr. Nelson, whether this document is a copy of a memorandum prepared by you and in your handwriting?

A. It is.

Q. And was that prepared at the committee meeting of January 5, 1955?

A. That is the date shown on this.

686 Q. Was that memorandum prepared as the meeting was progressing?

A. Yes.

Q. Did you attempt to note accurately some of the things that transpired at that committee meeting?

A. What I thought was pertinent to the discussion, yes.

By Mr. Freeman: I offer in evidence this two-page document which has been identified as Plaintiff's Exhibit No. 24.

By Mr. Meserow: I am going to object to the introduction of this exhibit as not being binding upon the clients I represent. We had nothing to do with this.

By the Court: What is it, a memorandum prepared by him during the course of the meeting?

By Mr. Freeman: Yes.

By the Court: And for his own personal use?

By Mr. Freeman:

Q. I assume, Mr. Nelson, this memo was for your own use and for the use of your railroad files, was it not?

A. Yes.

By the Court: It may be received as against him and his company, and you may inquire on it in so far as
687 what transpired at the meeting to corroborate.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 24.)

By Mr. Freeman:

Q. Mr. Nelson, since this is in your handwriting, would you read it to the jury so that they can hear it?

A. (Reading)

"'Willett suggested railroads form a separate . . ." company. There is no word "company." This is my own shorthand. There are words missing here.

Q. That is all right.

A. (Reading)

". . . separate and own stock. Permanent tie up. Then suggested forming our own separate company, not acceptable. J. L. Keeshin proposal not sufficient decrease from present cost to warrant change from Parmelee company. Railroads worse off if must load and unload trailers. Holt, PRR, mentioned thinking of some managements as to discontinuing passenger
688 transfer entirely. Also possibility of giving passengers a determined amount of money for their taxi transfer. Railroads to arrange for movement of checked baggage only."

Q. I want to call your attention specifically to the notation with respect to J. L. Keeshin. What was Keeshin's proposal at that time? Do you remember?

A. I don't remember in dollars and cents, but the

proposal was that whatever dollars and cents there might be involved in it, the railroads would handle in their own baggage room, the movement of baggage by the railroad personnel.

Q. You mean you would load and unload the trailers?

A. Yes. This was, of course, unsatisfactory in so far as our Grand Central Station was concerned, which I was representing indirectly as being with the Baltimore and Ohio Railroad, because it would require an increase in our personnel. Therefore, that phase of the proposal was not satisfactory at that time.

Q. Was that phase of the proposal ever determined prior to the acceptance of the Keeshin proposal on June 3 and June 13, 1955?

A. Well, that came up in January, January 5, 1955.

689 Q. Yes, and I am asking you this, Mr. Nelson, whether that particular element in Keeshin's proposal was ever rejected or accepted prior to the time you accepted Keeshin.

A. It was rejected.

Q. When was it rejected, Mr. Nelson?

A. Well, at one of the subsequent meetings. I couldn't tell you which one.

Q. Isn't it a fact, Mr. Nelson, that the issue of whether or not baggage should be loaded or unloaded by railroad personnel or Keeshin personnel wasn't decided until August of 1955 during the course of negotiations for the Keeshin contract, after he had been accepted?

A. I am sure that is not right, no, sir.

Q. Are you really sure, Mr. Nelson?

A. Yes, because it would not have been acceptable to our company.

690 Q. Definitely not acceptable?

A. Definitely, positively.

Q. Mr. Nelson, do you know whether or not the amount of the Keeshin proposal, as it was presented on January 5, 1955, was the same amount for the transfer coupon that was ultimately incorporated in the Keeshin contract?

A. I am sure it was lower.

Q. You are sure which was lower?

A. At that time the proposal, the proposed rate was lower than that which was subsequently proposed.

Q. Let me see if I get that straight. Are you saying that in January, 1955, Mr. Keeshin proposed a lower rate than he ultimately got in the contract with the railroads?

A. Yes, but it was on the basis that the railroads load and unload the baggage.

Q. Mr. Nelson—

By Mr. Freeman: Let me identify this six-page memorandum dated May 20, 1955, as Baltimore and Ohio 48-54, the code, as Plaintiff's Exhibit No. 25.

(Thereupon said document was marked Plaintiff's Exhibit 25 for identification.)

691 By Mr. Freeman:

Q. I show you Plaintiff's Exhibit No. 25, and I ask you whether you had that prepared during the course—I mean from your notes taken during the course of the committee meeting of May 19.

A. Yes.

Q. Does this memorandum attempt to set forth what transpired at that meeting and also an analysis of the Keeshin and Parmelee proposals?

A. That is right.

Q. Does it attempt to set forth as accurately as you knew how?

A. That is correct.

Q. Was this memorandum prepared for the purpose of informing your superiors in Baltimore, as well as for the files of the Baltimore and Ohio Railroad?

A. That is right.

Q. And was it prepared in the normal course of your railroad business and your functions with the railroad?

A. That is right.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 25.

By Mr. Thompson: Confine it to the Baltimore 692 and Ohio Railroad.

By The Court: The same ruling, confined to the witness and his company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 25.)

By Mr. Freeman:

Q. I ask you to look at this memorandum, Mr. Nelson, and to tell me whether or not it isn't true that the Keeshin proposal as far as the dollar amount for the transfer, remained the same from December 1954 through May of 1955 when this memorandum was prepared, and that it was $1.20 for the first year, $1.22 for the second year, and $1.23 for the third year?

By Mr. Thompson: Of course, if that is a question in the sense of cross examination, it is not based on the facts, and it is an assumption of fact which isn't true.

By Mr. Freeman: I am asking the witness.

By The Court: The witness may say no, it isn't true, or he may say it is true.

By Mr. Thompson: I think counsel knows that the proposal was amended on January 15.

By Mr. Freeman: Well yes, I think Mr. Thompson 693 is right.

By Mr. Freeman:

Q. The original Keeshin proposal was $1.20 for the first year with an escalator clause, and on January 15th the escalator clause was put in operation with $1.22 for the second year and $1.23 for the third year.

With that amendment, Mr. Nelson, do you know whether or not the Keeshin proposals remained that way from beginning to end as far as the dollar amount that he was to charge for the transfer coupon?

A. My recollection is that the original amount for which that memorandum was prepared was less.

Q. Did you participate in the preparation of the committee report, a so-called progress report, on January 5, 1955?

A. That is right; I did, sir.

Q. Would that report have contained the amount of the Keeshin proposal as of that time?

A. I think it did.

By Mr. Freeman: I will introduce that later. I would like to read various items of this memorandum to the jury.

694 By Mr. Meserow: It is not in evidence yet.

By Mr. McConnell: Yes, it is.

By Mr. Thompson: As to the Baltimore and Ohio only.

By the Court: The jury understands that, that it is limited only to the Baltimore and Ohio and not to the others.

By Mr. Freeman:

Q. Let me ask you a few additional questions first. Mr. Nelson, was your committee augmented by additional passenger traffic executives from other railroads at the May 19th meeting?

By Mr. Keating: I object to the classification of "executives".

By the Court: I beg your pardon?

By Mr. Keating: Objection to the classification of "executives".

By the Court: Representatives.

By Mr. Freeman: They are executives, your Honor; I am sorry.

By the Court: I will sustain the objection.

By Mr. Keating: And I object to Mr. Freeman's statement.

695 By the Court: Unless you say representatives or who they were.

696 By Mr. Freeman: All right.

By Mr. Freeman:

Q. Was the committee augmented by general passenger traffic managers of several of the railroads?

A. Who were members of the committee?

Q. Who were not members of the committee.

A. Whose representatives were members of the committee?

Q. Yes.

A. Yes.

Q. What I am asking you is whether or not members who were superior to the members of the committee did not come to the May 19th meeting.

A. Some of them did.

Q. Mr. Whittington, for instance, from your railroad?

A. Yes.

Q. Mr. Whittington held the position of what with the Baltimore and Ohio Railroad?

A. General passenger traffic manager.

Q. Is that the highest passenger traffic position under the vice-president?

A. That is right.

Q. And did Mr. Whittington attend any prior committee meeting or Chicago Terminal Lines meeting for ten years prior to 1955 that you knew of?

697 A. Ten years?

Q. Yes.

A. I forget when he left Chicago. He left Chicago in 1946 or 1945, whatever that period was, and from that period on he did not. Previous to that period he did.

Q. From the time he left Chicago he never again attended the committee meeting or a Chicago Terminal Lines meeting until this May 19th meeting, is that right?

A. That is right.

Q. And Mr. Whittington was at the May 19th meeting?

A. Well, let me see. I believe right at the top there it shows the names of the individuals. Yes.

Q. Was there any other individual present that had a capacity similar to Mr. Whittington for the first time?

A. Mr. E. R. Comer, passenger traffic manager of the Pennsylvania Railroad, and I believe that was the first appearance of Mr. J. R. Brennan, passenger traffic manager of the North Western Railroad.

Q. And Mr. Nelson, weren't you called by Mr. Bone of the New York Central prior to this May 19th meeting on or about April 28 and told or requested to have

698 present at the meeting top passenger executives because Cross had intervened in the transfer negotiations?

By Mr. Meserow: I object to the question.

By the Court: Objection sustained.

By Mr. Keating: And I move that statement be stricken.

By Mr. Thompson: It is a vicious misstatement of facts.

By Mr. Keating: And that the jury be instructed to disregard it.

By the Court: Yes.

By Mr. Freeman:

Q. Mr. Nelson, when did Mr. Whittington arrive in Chicago for this May 19th meeting?

A. That morning.

Q. Did he discuss the Chicago transfer problem with you before the meeting?

A. He did not.

Q. Was Mr. Whittington the prime mover at the committee meeting on May 19th?

By Mr. Thompson: That is calling for a conclusion.

By Mr. Freeman: I use his language, your Honor.

699 Was he the prime mover at the committee meetings?

By the Witness:

A. He was one.

By Mr. Freeman:

Q. No; prime is the prime mover. He was the principal—

A. As I recall it, he was one of the principals.

Q. Yes, and he did ask most of the questions, didn't he?

A. He asked a lot of them, a great many of them.

Q. Did Mr. Whittington stay in town after the May 19th meeting?

A. He did.

Q. How many days did he stay here, do you remember?

A. As I recall, it was just the next day.

Q. Wasn't it two days? Didn't he stay until May 21st?

A. I don't recall, but he was in Chicago the next day.

Q. Did he stay to receive this memorandum from you?

A. I believe I stated in my deposition that was so, but that was being presumptious on my part.

Q. In any event, you did deliver this memorandum to him in Chicago?

A. That is right.

700 Q. And did you also deliver another memorandum to him of your conversation with Mr. Bone with respect to supplementation of the Parmelee proposal?

A. I did.

701 Q. I will read parts of this memorandum to you.

"The regular sub-committee of Chicago Terminal Lines, augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, and Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad; Mr. E. R. Comer, passenger traffic manager, Pennsylvania Railroad; and Mr. J. R. Brennan, passenger traffic manager, Chicago and North Western Railway, met with Mr. J. L. Keeshin and associates and Mr. Morris Markin and associates of the Parmelee Transportation Company to discuss the proposals submitted by them for the transfer of passengers and baggage and checked baggage between stations at Chicago and other special services allied thereto.

"Am showing below results of discussion of the proposals already submitted, together with other services which were not clearly outlined therein and

702 would necessarily be included in a final understanding:

"J. L. Keeshin: Mr. Keeshin referred to his original proposal of December 15, 1954, and his letter of April 6, 1955, concerning and clarifying some of the items contained in his previous letter. The charges for the two principal services, that is, transfer of passengers together with hand baggage by motor vehicle and the transfer of checked baggage by truck had been properly covered in his original proposal.

However, there were other special charges which were discussed and which would have to be further confirmed by him. These latter charges are indicated by an asterisk mark."

Then the memorandum goes on to speak of equipment as follows:

"It is intended to purchase, to start operation, about 50 eight passenger station wagons equipped with two-way radio control, power steering, power
703 brakes and air conditioning. Baggage will be stored on top of vehicle in rack properly protected from the elements by a draw tarpaulin. In addition he intends to purchase ten 22 or 32-seat passenger buses."

There is a reference to the schedule and a reference to baggage. Then under charges for service:

"Regular transfer services. First year, July 1955-1956, $1.20 per piece, second year, July 1956-1957, $1.22 per piece, third year, July 1957-1958, $1.23 per piece. The fourth and fifth years, an increase of one cent per coupon for each five-cent increase in direct wage cost. Discussion with Mr. Keeshin developed his opinion that direct wage increase for each of these years would not be more than ten cents a year or two cents a year increase in the coupon rate. This would make the coupon rate for July 1958 to 1959, $1.25, and July 1959 to 1960, $1.27."

704 By Mr. Freeman:

Q. Then there is a little pencil notation which I would like you to read for me. In the original it was in red. What does it say and in whose writing is it?

A. (Reading)

"Suggest cut out."

It is not in my handwriting. If that is on the original, it is not mine.

Q. Did you previously identify that as Mr. Whittington's handwriting.

A. No, sir. I am not sure that it is.

By Mr. Freeman: Do you have the original of that document?

By the Witness: Let me see the original.

By Mr. Freeman:

Q. Yes. Is that Mr. Whittington's handwriting?

A. This is Mr. Whittington's copy.

Q. Did he discuss this remark with you?

A. No. This is the first I saw this, when these papers were all brought in.

Q. What does this mean to you?

By Mr. Thompson: Objection.

By the Witness:

A. I can't say. This is Mr. Whittington's hand-
705 writing. I had nothing to do with it.

By Mr. Freeman: Then there is some reference to baggage and schedules, special service, names, and general remarks.

"Mr. Keeshin also advised that he intended to go into the field of pick up and delivery of baggage in the Chicago area as well as handling large movements of baggage for groups such as shows, sports, or any other groups of individuals requiring such special baggage transfer. However, these services, of course, are out of the scope of our contract and are special arrangements which he intends to set up.

"Mr. Keeshin advised he intended to set up a special company to be incorporated in Delaware or Illinois with at least a $200,000 working cash fund, and could secure additional $500,000 for this fund if found necessary.

"It is the intention to take over as much of the drivers and other minor personnel of the Parmelee

company as would fit into his organization and will
706 pass the physical requirements. In addition, Mr. Keeshin informed us that the official personnel will be composed of those well versed in the handling of passengers and baggage, and that he would give this company his personal attention until such time as it would be functioning smoothly.

"Parmelee Transportation Company: Mr. Markin referred to his original proposal of March 15—"

By Mr. Thompson: 1955.

By Mr. Freeman: Excuse me. 1955.

(Reading):

"The first discussion was given to item 3, which covered the escalator increase in per coupon cost commencing with July 1, 1956, but upon which no ceiling was indicated. This item was canceled in its entirety and carried with it cancellation of item 4. Again there are some special charges which were discussed and not covered in his proposal and would have to be confirmed. These charges are indicated by asterisk mark.

707 "Passengers, Type: He intends to purchase 30 12-passenger limousine type vehicles similar to the 20 which he now has in operation, but which will have power steering and power brakes. Also he will retain a number of the 7-passenger limousines now in service. It is expected it will take at least twelve months to complete the replacement. Baggage will be stored in the rear of these new vehicles, the same as in the present type operated.

"Schedule: Present schedule which provides for the meeting of all trains will, of course, be maintained."

Then there is some discussion of baggage.

"Charges for service: Regular transfer service first year, July, 1955 to 1956, $1.20. Commencing

with July 1, 1956, adjustment of coupon rate of one cent for each increase of three cents per hour in wages of driver employees will continue yearly thereafter until the expiration of the contract, December 31, 1961, with a maximum charge of $1.25 per coupon.

708 "Discussion with Mr. Markin determines his opinion that he could possibly hold yearly increases to five cents to direct wages. Under this plan, our rates could increase two cents a year, but not above the ceiling of $1.25. Also there is the possibility of an increase of more than five cents in direct wages a year, which would increase our coupon rates accordingly, but again, the ceiling is $1.25.

"Special Services: Baggage remains."

and so forth.

"General Remarks: Mr. Markin advised that the new equipment mentioned above, which will be purchased and put in service as promptly as available, will cost in the neighborhood of $500,000.

"General Information: The new members of the subcommittee advised, as a whole, that it would be necessary for them to present both of the above proposals to their management before they would be in

709 position to advise a recommendation of either. Therefore the subcommittee will again meet at the Union Station at 10:00 a.m., Friday, June 3rd, at which time their report to all Chicago Terminal Lines will be composed as well as their recommendation, if any."

By Mr. Freeman:

Q. Mr. Nelson, did you have occasion to write a memorandum commenting upon the P-rmelee proposal of March 15, 1955?

A. I don't recall.

By Mr. Freeman: I ask to have marked for the pur-

pose of identification as Plaintiff's Exhibit 26 this three-page memorandum dated March 23, 1955, and bearing the initials R. E. Coleman, addressed to Mr. Whittington.

(Thereupon said document was marked Plaintiff's Exhibit 26 for identification.)

By Mr. Freeman:

Q. Will you look at Plaintiff's Exhibit 26, and tell me whether you prepared that memorandum?

A. I did.

Q. Was it prepared in the normal course of your 710 functions on this committee?

A. That is correct.

Q. Was it prepared shortly after you had heard and analyzed the Parmelee proposal?

A. It was.

Q. Did it set forth to the best of your ability your reactions to that proposal for information to the Baltimore office?

A. That is right, what I though was pertinent at that time.

Q. Was this prepared in the regular course of business and put in your railroad file?

A. That is right.

Q. And sent on to Baltimore?

A. That is right.

By Mr. Freeman: I offer Plaintiff's Exhibit 26.

By Mr. Thompson: Well, in the first place, your Honor, the exhibit is making reference to the Parmelee proposal by numbered paragraphs, and of course, in a good many respects it is unintelligible without the Parmelee proposal to go along with it.

711 Furthermore, it is objected to except as to the Baltimore and Ohio Railroad.

By the Court: It may be received only as against the Baltimore and Ohio and the witness—he is not a defendant?

By Mr. Freeman: Just the defendant railroad.

By the Court: Just the railroad.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 26.)

By Mr. Freeman: I think Mr. Thompson's first point is well taken. Now that the exhibit is in evidence, I will save the reading of it until we have put the Parmelee proposal in so that we can cross-reference the paragraphs.

By Mr. Freeman:

Q. I think I forgot something very pertinent in reading plaintiff's Exhibit 25. I would like to read to you a sentence that I did not read.

I read from Page 2 of this memorandum:

"There is still some question as to whether or not our baggage room employees will load or unload the 712 spotted trailers without cabs. This is permissible insofar as our company is concerned. (Letter of Mr. J. F. Whittington, December 4, symbol 8, 1954) Or his station agent and drivers will perform this service."

Now what did that mean, Mr. Nelson?

By Mr. Thompson: I should say the expression is perfectly simple.

By Mr. Freeman: I can remember this witness' testimony to the contrary.

By Mr. Keating: Your Honor, before he stated he was going to impeach the witness, and I object to his comment here again.

By Mr. Freeman: I withdraw the remark and apologize to the Court.

By the Court: That may be stricken.

By Mr. Keating: Thank you.

713 By Mr. Freeman:

Q. Mr. Nelson, you have had an opportunity to read that sentence, and it is simple, as Mr. Thompson suggests.

Now isn't it true, now that you have refreshed your recollection, that your previous testimony in this regard was erroneous?

A. Apparently so, but it is a matter in which I was very definite, and that is possibly why it sticks out in my mind very strongly.

Q. I am not seeking to raise any personal problem. But the fact of the matter is that on January 5, 1955, it was your opinion that the Keeshin proposal was not sufficiently decreased from the present rate to warrant any change from Parmelee, and that had reference to the coupon rate that Keeshin was proposing and nothing else, isn't that true?

A. That is right.

Q. And that the question of whether or not Keeshin's employees or the railroad employees were to unload and load these trailers had still not been settled as of May 20?

A. Apparently not. The memorandum doesn't lie.

By Mr. Freeman: I agree. Thank you.

714 By Mr. Freeman:

Q. Now you also attended a meeting of the committee on June 3rd, 1955, did you not?

A. I did.

Q. And did you prepare memorandum of that meeting?

A. I presume I did.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit 27 this three-page document in handwriting, previously identified as Nelson Exhibit 15, of the meeting on June 3, 1955, and as Plaintiff's Exhibit 28 for identification, this three-page typed memorandum, also dated June 3, 1955.

(Thereupon said documents were marked, respectively, Plaintiff's Exhibits Nos. 27 and 28 for identification.)

By Mr. Freeman:

Q. Mr. Nelson, I show you first this document marked Plaintiff's Exhibit 27, and ask you whether that is the memorandum prepared in your handwriting during the course of the June 3rd meeting and represents your
715 best recording of what transpired at that meeting or the high points thereof.

A. That is right.

Q. Was this prepared in the normal and regular course of your operations as a representative of the Baltimore and Ohio Railroad?

A. That is right.

Q. And was placed in the files of the Baltimore and Ohio Railroad?

A. That is correct.

Q. And is the same thing true of Plaintiff's Exhibit 28, except that Exhibit 28 is a typed copy of Exhibit 27, which were your penciled notes at the meeting?

By Mr. Thompson: Of course, it isn't the same, obviously, by a long shot.

By Mr. Freeman: All right.

Let me offer first Exhibit 27. I was just trying to shorten this. It is not the same, but from the same source.

By Mr. Thompson: Yes, the same man dictated the two of them.

By Mr. Freeman: May I offer first Plaintiff's Exhibit 27, the penciled notations?

By Mr. Thompson: If the Court please, the pen-
716 ciled notations are, as Mr. Nelson has previously expressed it, shorthand notes. They are simply notes,

apparently from the face of them, of things that came up and were discussed, and doesn't record any opinion of Mr. Nelson nor any judgment that he reached. He is just recording in shorthand headlines what was expressed at the meeting.

I think it isn't binding on anybody, and certainly no one besides the B&O.

By the Court: My judgment, Mr. Freeman, is that the witness is on the stand now. Unless that is used to impeach him as an adverse witness, it is merely corroborative of what he is testifying to.

By Mr. Freeman: Excuse me, your Honor, but this witness has prepared a memorandum of what transpired at a meeting, and certainly the memorandum is better evidence of what transpired than his recollection is now.

I have a right, as this man is a representative and managing agent of one of the defendants here, this memorandum contains admissions against interest, as I will point out to your Honor.

717 By the Court: I will let it go in as against his own company.

By Mr. Freeman: That I understand, and I don't have to continue to say that we regard the thing as broader, but we will—

By the Court: That is right. If you are putting it in on that basis as admission against interest, and there are any such admissions, they may go in as against his own company, and not binding on the others.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 27.)

By Mr. Freeman:

Q. With respect to this Plaintiff's Exhibit 27, let me just ask you about the notation in the right-hand corner on the first page.

Can you read that?

By Mr. Thompson: At the bottom?

By Mr. Freeman: The bottom.

By the Witness:

A. (Reading)

"Fourth and fifth year rate to be negotiated. Maxi-
718 mum fourth year $1.26. Fifth year, $1.29."

By Mr. Freeman:

Q. And the initials there, "J.F.W.," is that right?

A. "J.F.W."

Q. Now did this have reference to the Keeshin proposal? Was this the section of your memorandum that dealt with the Keeshin proposal?

By Mr. Thompson: Of course, I don't know what he is using this for, whether it is for recorded past recollection or what. The witness—

By the Court: I am only admitting it as admission against interest.

By Mr. Freeman: It also records what happened at the June 3rd meeting, your Honor.

By Mr. Thompson: But you can't—

By the Court: I think on that basis, Mr. Freeman, the rules of evidence are that the witness is on the stand, and you may interrogate him fully on what happened.

719 By Mr. Freeman: I will also interrogate him. Let me ask him about this admission against interest.

By the Court: If you have an admission against interest, you are entitled to have it in, but that is all.

By Mr. Freeman: I don't agree that that is the rule. I can put in what happened at the meeting by writing or oral testimony, your Honor.

By Mr. Freeman:

Q. Mr. Nelson, let me ask you whether those remarks were made by Mr. Whittington in connection with the Keeshin proposal, and that Mr. Whittington indicated

that the Keeshin proposal might result in a rate in the fifth year of $1.29?

By Mr. Thompson: Of course, this is Mr. Whittington's notes apparently. I don't know what it is.

By Mr. Freeman: He recorded what Mr. Whittington said.

By the Court: The question is, did Mr. Whittington say it in his presence and—

720 By Mr. Freeman: And did he record it in the memorandum.

By Mr. Meserow: It is not recorded. It is in dispute, he says. The document speaks for itself.

By the Court: I will let him answer. If you call for a conversation as to what he said at the meeting, he may answer.

By the Witness:

A. I am not sure, your Honor, just what he covered.

By the Court: The question is, did you hear him say it at the meeting?

By the Witness: I do not recall how or why this notation was put here. I frankly do not. Too much time has passed unless—

By Mr. Freeman:

Q. Did you recall at the time of your deposition, Mr. Nelson? Did you testify with respect to this item at the time of your deposition?

A. I don't recall.

Q. Mr. Nelson, I call your attention to Page 1413 and 1414 of your deposition, and ask you whether you didn't testify as follows:

721 "Q. Let's go back to the bottom of Page 1 for a minute. Would you tell me what the notes in the lower righthand corner of that page say?

"A. (Reading) 'Fourth and fifth year rate being negotiated. Maximum fourth year, $1.26. Fifth year, $1.29.'

"Q. Isn't there something in parentheses after the $1.29?

"A. J.F.W.

"Q. Do you know what that refers to?

"A. Evidently Mr. Whittington brought up the question about the rates in the fourth and fifth years, and if there was any definite information."

Was that your testimony then?

A. If it was four years ago, it still is now.

Q. Is it true that Mr. Whittington brought up the question of the Keeshin rate possibly going to $1.29 in the fifth year?

By Mr. Thompson: That isn't what he said.

By Mr. Freeman: I am asking him now.

By the Witness:

A. No, sir.

By Mr. Freeman:

722 Q. What is that?

A. No, sir.

Q. What reference did Mr. Whittington make to $1.29?

A. I can't recall at this late date. If I didn't know four years ago, I sure don't remember today.

Q. You did say four years ago that evidently Mr. Whittington brought up the question about the rates in the fourth and fifth years, didn't you?

Did Mr. Whittington bring up these figures of $1.26 and $1.29 for the fourth and fifth years of this Keeshin proposal?

A. What is in the deposition, whatever is in there, then, applies now, because I don't remember any differently now than I did then.

Q. All I am trying to do is have you be consistent with what you then testified.

By Mr. Owens: It is consistent. He is asking him to speculate.

By the Court: It may be stricken.

By Mr. Freeman:

Q. Is it also true that at this meeting of June 3rd that the committee first met and voted for Keeshin, and then called him into the room to clarify certain major
723 issues that had not as yet been determined?

A. He was called into the meeting to clarify certain conditions, but I don't think they were major. There were some minor items that needed to be clarified definitely.

Q. Are you agreeing with me that this decision was first made, the vote was first taken by the committee, they voted for Keeshin, and then called him in for clarification?

By Mr. Thompson: There is no basis for that assumption.

By Mr. Freeman:

Q. Are you agreeing with that remark? I am asking you that question. You have left that out of your answer.

A. Well, in substance, the understandings that the subcommittee had and reported to the Chicago Terminal Lines was acceptable, but there were certain conditions apparently that needed clarification.

Q. I am sorry, Mr. Nelson, but you are confused. This June 3rd meeting is the meeting of the committee of six as augmented by your people. Now is it true that the committee assembled, and I will add to this—

A. I was thinking of June 13th.

724 Q. That is right, you were confused. The committee assembled, Mr. Whittington moved to accept Keeshin, there was a vote of the committee unanimously for Keeshin, and then they called him on the telephone and had him come over to the committee meeting to clarify certain issues, is that correct?

By Mr. Thompson: We object to a question assuming facts which are not in evidence. There is no such evidence of such a routine.

By the Court: If he knows of his own knowledge, he may answer.

By the Witness:

A. I do not recall at this late date if that is the fact.

By Mr. Freeman:

Q. Didn't you memorialize that in your memoranda?

A. If it is in here. I say, without reading this, these speak for themselves.

By Mr. Freeman: You see, your Honor, that is the reason I need the memoranda to refresh this witness' recollection.

By the Court: Who is stopping you from referring to them?

By Mr. Freeman: Nobody is.

725 By Mr. Keating: It is just another one of his comments that I have been objecting to all afternoon.

726 By Mr. Freeman:

Q. I ask you to look at Plaintiff's Exhibit 28. Was this prepared by you after you returned from the June 3rd meeting?

A. It was.

Q. And did you utilize the penciled notes that have been identified as Plaintiff's Exhibit 27 in the preparation of this typed memorandum?

A. To a great extent, yes.

Q. And was this memorandum prepared in the normal course of your railroad business and placed in the file in Chicago and copy sent to Baltimore?

A. It was placed in our file, and I am sure it was sent to Baltimore.

Q. And does it, as nearly as you can and humanly can, accurately set forth what major developments occurred at the June 3rd meeting as you saw it?

A. That is the purpose of it.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 28.

By Mr. Thompson: Well, with the same limitation, receivable against the B&O, it is all right.

By the Court: The same ruling, against his own 727 company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 28.)

By Mr. Freeman:

Q. Now I ask you to look at Exhibit 28, and ask you to answer not my last question, but the question I did not get an answer to. Let me put it to you, if you don't recall.

Is it true that the committee met, that Mr. Whittington moved the acceptance of Keeshin, that the committee approved Keeshin, and then called him in to discuss issues that remained undetermined?

A. May I have Exhibit 27, too?

Q. Oh, yes. I am sorry.

A. One refers to the other.

By Mr. Thompson: There is nothing in this memorandum that says any such thing, if the Court please.

By the Court: The witness will so answer if he finds that.

By Mr. Freeman: That is a gratuitous remark of Mr. Thompson's that was unnecessary.

By Mr. Freeman:

728 Q. I am waiting for your answer, Mr. Nelson.

A. Oh, well, from reading both the penciled memorandum and this memorandum here, it would appear that there were certain portions of the Keeshin proposal which needed confirmation, and that the members at the meeting voted for the Keeshin proposal but requested that he ap-

pear to further definitely confirm what our understandings were because it had not been submitted as yet in writing.

Q. Hadn't the chairman of your negotiating committee, Mr. Bone, taken the very firm position that no proposals would be accepted and no suggestions would be accepted unless they were in writing?

A. We had asked, or rather he had asked, and the committee had agreed, that they should be firm bids.

Q. Then is it a fair statement to say that the committee first voted for Keeshin and then asked for, as you put it, confirmation of certain elements of his proposal?

By Mr. Meserow: On what date?

By Mr. Freeman: On June 3, 1955.

I thought you had answered that already.

By the Witness:

729 A. There are some points that were verbally discussed on which there was no confirmation, but the proposal as a whole, as had been submitted in writing, is what was acceptable.

730 Q. All right. Now, let's see what points were discussed. Did the committee discuss with Mr. Keeshin and seek to secure a definite commitment with respect to the coupon rate for the fourth and fifth years?

A. That is contained in this memorandum here.

Q. Would you answer it without the memorandum and just use it to refresh your recollection?

Did the committee seek to get a firm coupon cost rate from Keeshin for the fourth and fifth years?

A. They did.

Q. And did Keeshin refuse to give them that firm rate?

A. No. It just states here:

"He further advised he would expect a verbal understanding that the rate would not exceed $1.27 a coupon at the fifth year."

Q. He refused to give it to you in writing, then, at this time?

A. At that time for reasons of his own.

Q. Later you did negotiate a contract with Keeshin so that the fifth year was $1.27, wasn't it?

A. That is right.

Q. What was the maximum rate that Parmelee had
731 proposed through December, 1961, as contained in your memorandum which has been identified as Plaintiff's Exhibit No. 25? Wasn't it $1.25?

A. That was his last proposal.

Q. That is right. Now, lt me ask you another question, and when you say that was "his" you mean Parmelee's?

A. Parmelee, yes.

Q. Did Keeshin come into the meeting and advise the committee that he had ordered his equipment on June 1st, 1955, two days before?

A. At this June 3rd meeting?

Q. Yes. Look at your penciled notes for June 1.

A. That is right.

Q. Did he tell you what he had ordered?

A. What he had ordered?

Q. Yes, what kind of equipment?

A. I have here "various equipment" and I presume it is correct.

Q. What did he order?

A. Fifty Ford six-passenger station wagons, ten Ford eight-passenger station wagons, 25 tractors, two station wagons for remains, forty 20-foot trailers.

Q. Did you have occasion to inspect some of Keeshin's proposed equipment prior to the June 3rd meeting?

732 A. I did.

Q. Had you reported to your superior, Mr. Coleman, who was the Chicago superior, dissatisfaction with some of that equipment?

A. Some aspects of it, yes.

Q. You were dissatisfied with the Volkswagens that he sought to buy, weren't you?

A. That is right.

Q. You felt the fact there weren't exits on both sides presented an element of a hazard, unsafety for passengers, didn't you?

A. It wasn't—they couldn't be used advantageously in our station.

Q. And you were worried also about the trailers, that the tailgates wouldn't fit in your station?

A. I wasn't worried about it. It was a problem that had to be solved.

Q. You felt it wouldn't fit your station either?

A. It had to be solved. It meant the present loading platform would not have sufficed. There was nothing to be worried about.

Q. In other words, you would have to change the station or change the equipment, wouldn't you?

A. It was just a question of a loading platform, not changing the station.

733 Q. Was this of concern to you that you would have to expend funds?

A. It was a problem that could have been worked out.

Q. Money will solve any problem?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection, your Honor.

By Mr. Freeman:

Q. I ask you, Mr. Nelson, would this involve money on behalf of the Baltimore and Ohio Railroad?

By Mr. Keating: I object. That was not his question.

By the Court: He may answer that.

By the Witness:

A. If it had to be done, yes. It was a problem to be solved.

By Mr. Freeman:

Q. Were you satisfied or did you express concern with Keeshin's proposal to use buses?

A. Well, the buses had to be limited to size in our depot if they were used, even for group parties.

Q. Did you ever express this concern to Mr. Keeshin?

A. I don't recall. I presume I did.

Q. When did you inspect Keeshin's equipment; do you remember what day it was?

734 A. June 2nd.

Q. And June 1st he had already ordered the equipment?

A. So he stated. I don't know.

Q. Was there any discussion of the question of who was to load and unload the trailers at the railroad stations at this June 3rd meeting?

A. No, there is nothing in either the penciled or typewritten memorandum, so it must have been something that had been already concluded.

Q. Or it could have been something that had not as yet been determined and was not determined until a later date?

By Mr. Thompson: Objection. That is pure speculation.

By Mr. Freeman: He speculated one way, and I am asking him to speculate another.

By Mr. Thompson: he will quit waving the flag so much, we can see th witness.

By the Witness:

A. I don't recall.

By Mr. Thompson: Or else he has his hands in his pocket.

By Mr. Freeman: I do feel your Honor should restrain Mr. Thompson. He may have had an exalted posi-

735 tion sometime or other, but he doesn't act it now. I am trying to examine this witness in all seriousness. If

Mr. Thompson wants to engage in bar room tactics, I can accomplish that, but not here.

By the Court: I will prevent it.

By Mr. Thompson: That is a fine comment from one who has been performing like you have all day.

By Mr. Freeman:

Q. Mr. Nelson, we had previously discussed Mr. Whittington coming to the May 19th meeting. Did Mr. Whittington come to the June 3rd committee meeting?

A. Yes, he did.

Q. Do you recall when he arrived for that meeting?

A. He arrived that morning.

Q. Did he talk to you before the meeting?

A. No, sir, he did not.

Q. Did he again dominate the meeting?

By Mr. Thompson: Well, that is a conclusion.

By Mr. Freeman: All right.

By Mr. Freeman:

Q. Did he dominate the meeting?

736 A. He was very active.

By Mr. Meserow: I object to that question.

By Mr. Thompson: It is a conclusion.

By the Court: He said he was very active. That was his answer.

By Mr. Thompson: That is what he was there for. He didn't come from Baltimore for fun.

By Mr. McConnell: I move to strike out the Judge's testimony.

By the Court: Yes. Let's confine ourselves to questions and answers and objections and rulings.

By Mr. Freeman:

Q. Mr. Nelson, did you previously testify that Mr. Whittington dominated the committee meeting of June 3rd?

A. June 3rd or May 19th?

Q. June 3rd now.

A. I don't think I said June 3. On the May 19th meeting I said he was a prime factor. I will still reiterate he was very active at the June 3rd meeting as well.

Q. To go back to the May 19th meeting, after it was completed you did prepare this memorandum of May
737 20th, which has been identified as Plaintiff's Exhibit No. 25, and you handed it to Mr. Whittington?

A. That is correct.

Q. Did you also receive a telephone call from Mr. Sidney Bone on May 20th and prepare a memorandum which you handed to Mr. Whittington?

To refresh your recollection I will have marked, for the purpose of identification, as Plaintiff's Exhibit No. 29, this one-page memorandum from Mr. S. F. G. Nelson to Mr. J. F. Whittington, dated May 20, 1955, and coded as B&O-45.

(Thereupon said document was marked Plaintiff's Exhibit No. 29 for identification.)

By the Witness:

A. I did.

738 By Mr. Freeman: I also ask this one-page memorandum dated May 20, 1955, be marked for the purpose of identification as Plaintiff's Exhibit No. 30.

(Thereupon said document was marked Plaintiff's Exhibit No. 30, for identification.)

By Mr. Freeman:

Q. Was Plaintiff's Exhibit No. 29 prepared by you, Mr. Nelson?

A. That is correct.

Q. And was it furnished to Mr. Whittington?

A. Right.

Q. Do you know if Mr. Whittington prepared Plaintiff's Exhibit No. 30?

A. I do not know.

Q. Whose handwriting is on this Exhibit No. 30?

A. It appears to be Mr. Whittington's, but I don't know for sure.

By Mr. Keating: Mr. Freeman, is No. 30 the memo of Mr. Whittington of May 20?

By Mr. Freeman: B&O 46, yes.

By Mr. Thompson: Are you using two of them?

739 By Mr. Freeman: Yes. I offer in evidence Plaintiff's Exhibit No. 29. Is there any objection to that?

By Mr. Keating: That is No. what?

By Mr. Freeman: No. 45.

By Mr. Keating: All right.

By Mr. Freeman: And Plaintiff's Exhibit No. 30—I will offer them together.

By Mr. Meserow: I object to them as not binding on my clients.

By Mr. Keating: The same ruling on this exhibit as to the B&O?

By the Court: I am waiting for a word from Judge Thompson.

By Mr. Thompson: Well, these two documents are identical, except in form. I suppose he has a reason for putting the two of them in. They record hearsay, but I suppose they are binding on the B&O only.

By the Court: Same limitation, same ruling.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 29 and 30.)

740 By Mr. Freeman:

Q. Now, Mr. Nelson, I ask you whether it isn't true that there is on Plaintiff's Exhibit No. 30 a tabulation of the Parmelee proposal by years and alongside of it a tabulation of the Keeshin proposal in rates by years.

A. That is what the "K" means there, the man's handwriting.

By Mr. Freeman: I would like to read this and show it to the jury while I am reading it, if I may. I am reading from Plaintiff's Exhibit No. 30:

"Mr. Sidney Bone, Chairman of the subcommittee, called me at 4:55 p.m. today advising that Mr. Markin had changed his formula for the coupon charges as follows: Basic charge, $1.20 effective July 1, 1955. The maximum rate that would be charged thereafter would be, 1955, the first $1.20, and the column under "K" $1.20.

"July 1, 1956, $1.22 and $1.22. July 1, 1957, $1.23 and $1.23 under 'K'. July 1, 1958, $1.24 and $1.25
741 under 'K'. July 1, 1959, to June 30, 1960, $1.25 for Parmelee and under 'K' $1.27 with an asterisk in the last two, based on possible ten-cent wage increase."

Then there is the notation at the bottom of the memorandum in what purports to be Mr. Whittington's handwriting:

"Suggest advise committee after talks with his labor people would be no increase beyond 1957 for $1.23 rate would continue last two years of contract."

742 I read further from the memorandum as follows:

"The rate would increase one cent per coupon for each three cents of wage increase but not to increase the maximum rate as shown above."

By Mr. Thompson: That refers to the Markin proposal.

By Mr. Freeman: Yes.

I am skipping, and read as follows:

"Mr. Bone advises that he was getting this information out by mail today. I believe Mr. Markin is doing this to protect himself from the unions getting too great an increase in any one year. This would be part of his bargain that the carriers would only allow him

to increase his rate so much each year. J. F. Whittington."

By Mr. Freeman:

Q. Do you know what Mr. Whittington was referring to when he made the notation at the bottom of this memorandum:

"Suggest advise committee after talks with his labor people . . ."?

743 A. I would have no idea.

Q. Did he discuss that with you at your meeting when you met with him?

A. No, sir, he did not.

Q. Did he ever have any discussion with you about the Chicago transfer situation, Mr. Nelson?

A. Very seldom, because of the memorandum forms which I had sent to him after each meeting, and apparently he concluded they were complete in themselves.

Q. Did you at any time suggest or recommend Keeshin's proposal be accepted?

A. I made no recommendation in any of my memorandums. They were strictly unbiased, merely a report of the pertinent facts as I saw them.

Q. I agree with that, too.

By Mr. Freeman: I would also like to have marked, for the purpose of identification as Plaintiff's Exhibit No. 31, this three-page—well, I had better mark No. 31 as a two-page memorandum of June 21, 1955 from Mr. Tilquist to Mr. Nelson and as Plaintiff's Exhibit No. 32 a one-page memorandum from Mr. Nelson to Mr. Coleman dated June 23rd, 1955.

744 (Said documents were marked, respectively, Plaintiff's Exhibits Nos. 31 and 32 for identification.)

By Mr. Freeman:

Q. Before asking you about Exhibits 31 and 32, Mr. Nelson, is it true that the Baltimore and Ohio Railroad at

present is actually paying Keeshin $1.27 for the transfer service?

A. It is.

Q. And that last year you paid Keeshin $1.25 for the transfer service?

A. That is right.

Q. And in both instances these rates are in excess of the maximum ceilings in the Parmelee proposal for the two years involved, is that right?

A. I believe so.

Q. Now Mr. Nelson, I ask you whether you in the normal course of your railroad business received Plaintiff's Exhibit No. 31 from Mr. Tilquist.

A. This is the memorandum to me.

745 Q. Did you receive it in the normal course of business with your railroad?

A. That is right.

Q. Did you, in the normal course of your functions, prepare Plaintiff's Exhibit No. 32, dated June 23, 1955?

A. That is right.

Q. Was this memo prepared for the files and transmitted to your superior, Mr. Coleman?

A. That is right.

Q. And it was part and parcel of your regular functions in connection with the Chicago transfer situation, was it not?

A. That is right.

By Mr. Freeman: I offer in evidence Exhibits 31 and 32 against the Baltimore and Ohio Railroad.

By Mr. Thompson: If the Court please, these exhibits are, both of them, documents after the vote that was taken on June 13th by the terminal lines awarding the contract to Mr. Keeshin's company, and they have to do with negotiations or working out arrangements.

746 This memorandum from Mr. Tilquist—by the way, Mr. Nelson, he is the baggage agent over at the station?

By the Witness: At the Grand Central Station, that is right.

By Mr. Thompson: This memorandum from Mr. Tilquist to Mr. Nelson, which is offered as 31, has to do with working out arrangements and the formulation of the contract after the thing was over and certainly could have nothing to do with the matter in controversy, it seems to me.

By the Court: Is this subsequent?

By Mr. Freeman: You will recall the witness' testimony with respect to the loading and the unloading of trailers. This memo specifically has reference to that testimony. It is true that it occurs on June 23, 1955, but as we will determine, it has—this witness has some very specific knowledge.

By the Court: From whom is that?

By Mr. Freeman: The second memo, No. 32, was prepared by Mr. Nelson.

747 By the Court: That may be received.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 32.)

By the Court: And the other one?

By Mr. Freeman: From his own company.

By the Court: Both of them will be limited to his own company and received.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 31.)

By Mr. Freeman:

Q. Have you had occasion to look at Plaintiff's Exhibit No. 31, the memo that you prepared on June 23rd?

By Mr. Thompson: Mr. Tilquist prepared that.

By Mr. Freeman:

Q. I am sorry; 32, then.

A. Yes, sir.

Q. Does that refresh your recollection that the matter of who was to load and unload baggage, whether it was Keeshin employees or the railroad employees had still not been settled as of June 23rd?

748 By the Court: I presume 1955?

By Mr. Freeman: 1955, yes.

749 By the Witness:

A. Well, I think there is a question in doubt, because in my mind I undoubtedly felt one way because I saw in my memorandum:

> "It would appear from the attached that Mr. Keeshin is not quite set in the arrangements for the handling of checked baggage between stations."

I evidently had different thoughts in the matter up to that time.

By Mr. Freeman:

Q. Let me read what I regard as significant in this memo to the jury, if I may, the second paragraph, Mr. Nelson.

> "In addition, I feel that Keeshin is hedging from the original arrangement of his own people loading and unloading trailers except after their forty-hour period when our baggage room employees can perform this service. They are now asking that our baggage room people perform this service at all times. We may be able to get by at our stations without additional
> 750 personnel, but I don't think this would be possible in the larger stations such as the Union Station, the North Western, and so forth. Furthermore, if our baggage room way bills as well as unloading and loading this baggage, it would lift the entire responsibility from Keeshin as to the condition of baggage since at no time would his personnel handle the same. I can see where we can way bill it, and they

would accept exceptions as noted on our way bill but do not feel we should give in to any arrangement whereby the complete station handling is by our baggage room personnel. I am sure Keeshin set up his costs on the basis of his personnel loading and unloading baggage because at no time did the subcommittee say our baggage room people would perform this work. Therefore, what the mutual savings would be, I cannot understand, because if the carriers have to add more personnel in the baggage room it would be the railroads who would be losing money and Keeshin alone making a saving."

751 There is a notation on the right margin. Is that in your handwriting, Mr. Nelson?

By Mr. Thompson: The left margin, you mean?

By Mr. Freeman: Yes, the left margin.

By the Witness:

A. No.

By Mr. Freeman:

Q. What is the notation, and do you know who put it in?

A. No. It says:

"8:30 a.m. to 7:00 p.m."

At this time I don't recall what that might mean.

By the Court: I presume you will take some time to cross examine?

By Mr. Thompson: Yes.

By the Court: All right.

I guess the jury have worked hard enough.

By Mr. Freeman: I have nothing further of this witness in any event.

By the Court: It will take some time anyway.

Have a nice evening, and again I want to remind you to keep it all to yourselves and discuss it with no

752 one, and I will see you tomorrow morning at 10:00 o'clock.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:30 for you gentlemen.

(Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Thursday, April 28, 1960, at 10:30 o'clock a.m.)

753 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Thursday, April 28, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

754 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

755 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al., the case on trial.

(Whereupon the following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Good morning, gentlemen. Are you ready for the jury?

By Mr. Meserow: If the Court please, I would like to address the Court on a motion on behalf of Mr. Keeshin.

Yesterday, in the court room, Mr. Keeshin was served with a subpoena duces tecum by Mr. Freeman. Of course, we have had him here every single day, but I didn't even get the courtesy of asking to have my client available with his records.

I am making a motion to quash the second paragraph of this subpoena.

The first paragraph has to do with originals of all documents, papers, memoranda and records marked as Keeshin exhibits at the deposition of John L. Keeshin
756 before the Honorable Augustine J. Bowe, a Special Master appointed by the Court, Exhibits 2 to 59.

We have no objections to producing those.

Incidentally, they were made available under a protective order by Judge Sullivan to Mr. Freeman in my office, of which he made notes and saw them all. We have no objection, and we have them here now.

757 The second paragraph is the one that we as asking to quash. No. 2 reads:

"All business and financial records and books of account maintained by or for Railroad Transfer Service and prepared during or for any part of the period from October 1, 1955, to date, including all statements of profits and losses, all books of original entry, ledgers, journals, records of employees and records of the volume of transfer and pickup and delivery business performed by and gross revenues realized from such business by Railroad Transfer Service, Inc., during the period between October 1, 1955 and this date."

Your Honor, if we had to bring all of these in, we would have to have a truck to do it. Mr. Keeshin is in the trucking business, and that is not the problem.

The problem is that the books and records of the Railroad Transfer Service, which, incidentally, were voluntarily made available—

By the Court: The Railroad Transfer Service, is that corporation operating?

758 By Mr. Meserow: Yes, operating the transfer service. They are a party defendant to this case, but the books and records, Mr. Freeman requested the examination of the books and records, and we obtained a protective order from Judge Sullivan about it, and they were made available to Fred Andrews, a certified public accountant, who examined them a couple of years ago, and just shortly before this trial started Mr. Freeman wanted the most recent ones, which were not covered by the order, but we voluntarily let Mr. Andrews examine them, so he has all the records of the profits and the losses and the revenues and anything else he wanted.

Now, your Honor, No. 1, the reason we are asking to quash this second paragraph is that it is not material to the issue of public injury. Whether or not Railroad Trans-

fer made a profit or suffered a loss, what their payroll records were, what their volume of pickup and delivery of baggage was, that has nothing to do with the public injury, and I am asking that that be quashed.

If your Honor does not wish to proceed on that theory of quashing this second paragraph, then I will add an additional reason why it should be quashed.

759 By the Court: First, let me hear from Mr. Freeman.

By Mr. Meserow: I am not through, your Honor.

I have here a protective order entered by Judge Sullivan on June 27, 1958, in which he said that this information shall only be given to the attorneys in the case or their accountants, and nobody else on the outside.

The reason for that was advised, because we pointed out to the Court, and Mr. Freeman can't deny it because I have here the transcript of the record, in the course of this trial, after the case was on, in the course of the pendency of the case, there was a long article appeared in Drew Pearson's column about this case. It was full of fabrications, misrepresentations, and misstatements.

In addition, your Honor, it quoted three excerpts from letters written by Judge Thompson's clients from the railroad files—I forget the names of the railroads, but I have the copy here. Three railroad letters which were taken in depositions by Mr. Freeman, and he, besides the railroads, were the only ones that knew about it.

So it must have come from Mr. Freeman and nobody else. Judge Sullivan asked Mr. Freeman, "Did you talk to Drew Pearson?" and Mr. Freeman, in open court,

760 admitted that he had talked to Drew Pearson. I think he denied giving him this information, but that was the only source.

Now, if your Honor please, as a result of that, Judge Sullivan criticized Mr. Freeman for doing what he did

in a pending case, and he entered this protective order. He did not permit Mr. Freeman to make photostatic copies of these records and exhibits of Mr. Keeshin or of his books and records of the Railroad Transfer Service, as he had done with all the railroad files.

We are a competitor. Railroad Transfer is a competitor of Parmelee. We do not wish these records taken and photostated and used against our client. We think they are privileged.

Now that is our position here, your Honor. We have no objection to bringing all the Keeshin exhibits that Mr. Freeman saw. We will furnish him with copies if he wants. But we think that the second paragraph should be quashed because it is immaterial to the question of public injury.

By Mr. Freeman: Your Honor, this statement, I am most reluctant to say, is so full of inaccuracies and falsehoods that it reflects upon the professional character of this man. But in any event, let me straighten out
761 a few things.

With respect to this second paragraph, the financial records were made available to us pursuant to your order, not Judge Sullivan's. It was pursuant to your order.

Mr. Meserow has no excuse for forgetting that because he specifically asked me to furnish him with a copy of your order when we asked that our accountant go in to see the books and records.

762 Now the only reason we have served this subpoena —well, there are two reasons.

With respect to the exhibits themselves, we wanted the exhibits here so that we could identify them in the event we went into those subjects. We recognize that if your Honor continues to rule as you have, the only thing we will do is identify them and offer them, but they will be

rejected, or maybe some of them will not. Some of them will bear upon the issue of public injury.

By the Court: You are talking now about the 59 exhibits?

By Mr. Freeman: Yes, they are 59.

By the Court: No objection to that.

By Mr. Freeman: No.

The second issue, as Mr. Meserow mentioned, we have taken an audit and sent a man to look over certain books and records. They have denied us certain information. They have denied us the statistical information that I do want also to come here. But primarily we ask that these books be brought here so that we can lay the proper foundation for the summaries that we are going to submit.

Now if Mr. Meserow will stipulate that in the event you are willing to receive financial data—this is the dam-
age issue, and I rather suspect that you will exclude
763 it.

By the Court: That is right.

By Mr. Freeman: But in any event, we will bring forth a witness who will testify that he went to the original records, made certain summaries, and according to all the rules that I have ever known, these summaries can only be offered if the original books and records are available in court, and so we are asking them to be brought here.

If Mr, Meserow at this stage is willing to stipulate that these summaries can be offered without the necessity of having the books here, we will proceed on that basis, recognizing that the issue of damages is one that we are going to have some difficulty establishing before the jury at this stage of the proceedings.

By the Court: May I ask a question now?

By Mr. Freeman: You sure may.

By the Court: I haven't regarded the personalities among the lawyers. I don't pay any attention to that. I mean, it is just too bad that they happen, and we don't indulge in them, but they have no effect on me.

Secondly, I have to rule, to be consistent with my previous rulings during the past five days, that this goes
764 directly to the element of damages and hasn't any bearing on public injury.

I will permit you to make an offer of proof with the summary, the same as though the original records were here, for the protection of your record.

By Mr. Freeman: Can we get that agreement?

By the Court: I am ruling upon it without an agreement. I am letting you make that offer, and I will not permit you to bring in the books and records, so you are protected more than by an agreement.

By Mr. Freeman: Very well.

By the Court: I will quash the second paragraph so that absolves you of any need for it, but I am going a step further and saying on your offer of proof I will permit you to use any summary as though the original books were present.

Now, I will go a step further than that. If there is anything in the books that have not yet been touched upon or have been denied to you, when and if the time comes, I will require counsel to open up those books for the additional information so that you may use a complete summary, if and when it is completed.

By Mr. Freeman: I would like that opportunity now, your Honor.

By the Court: I am not going to do it now because
765 I am ruling that it is not admissible at this time.

By Mr. Freeman: Can we have the benefit of preparation, even though we are not submitting it at

this time? Can we have our accountant make the statistical analysis that I requested and which was rejected?

By the Court: I am quashing the second paragraph so you are fully protected.

By Mr. Meserow: Thank you.

By Mr. Thompson: Of course, as far as the other defendants are concerned, we certainly object to making offers of proof which are clearly outside of any possible relation to the question before the Court. This matter of damages is obviously something that is separable.

By the Court: I will cross that when he makes the offer. I realize, Judge Thompson, I would like to say it again and give you my clear thinking—I may not be clear. I don't profess to have an exclusive on knowledge. I am just trying to go along the best I know how.

My judgment is, in all fairness, and I am trying to be very fair, the least I can afford the plaintiff is an opportunity, if they are making a record, without injury to the defendants or any of them, is to make an offer of proof.

As I read the cases it is discretionary with the
766 Court. I have spent a little more time in the library,
and I have got some more cases on it. It is entirely discretionary with the Court. I think I have the right to exclude it, in my discretion, but where it is openly stated to me in open court that they want to make a complete record, and there is a very clear cut division of opinion here, and we understand each other now, as to where public injury begins and where it stops. I do not want to be too technical about it. I would rather have the Court of Appeals, if they are going to review it, say the Judge was not arbitrary.

All right, let's proceed.

By Mr. Thompson: Well, of course, as far as damages are concerned, that is obviously something you can separate. There is no question about it.

By the Court: I am inclined to agree on that issue except for one thing. If there is any tendency or any suggestion to me that it may lead to something else, I cannot prejudge it.

All right.

(Whereupon, the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen.

767 Is everybody happy?

All right. Proceed.

By Mr. Freeman: I have some further questions of Mr. Nelson.

768 By the Court: I would like to recess at 12:15 until 2:15, so you can arrange your time. I have a public meeting where I have to be at 12:30 not too far from here. It may take until a few minutes after 2:00. You can figure on your time up to 12:15 or 12:20 and then up to 2:15. You can adjust your appetites accordingly, ladies and gentlemen of the jury.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (continued) by Mr. Freeman.

Q. Mr. Nelson, you will recall at our last session we were discussing the question of the reason, the primary reason why this committee of six, the negotiating committee, was established; you recall that testimony?

A. Yes.

Q. I ask you whether or not the committee prepared a progress report as a result of their January 5, 1955, meeting, and the progress report was dated January 5,

1955, summarizing the negotiations that the committee had conducted to that time?

A. That is right.

769 Q. Did you participate in the preparation of that progress report?

A. I did.

Q. Was it transmitted to the Chicago Terminal Lines as an indication of the negotiating committee's work to that time?

A. I believe it was transmitted to Chairman Padrick, wasn't it, rather than to the individual lines?

By Mr. Freeman: Let me identify this, and then I think it will clarify your recollection. I would like to mark, for the purpose of identification, this seven-page compilation of material covered by a transmittal letter of January 11, 1955, and coded A-72, second series, to A-77-A, second series, as Plaintiff's Exhibit No. 33.

(Thereupon said document was marked Plaintiff's Exhibit 33 for identification.)

By Mr. Freeman:

Q. I show you Plaintiff's Exhibit No. 33, Mr. Nelson, and I ask you whether or not Pages 2 to 3 of that exhibit is the progress report made by the committee and signed by the six members of the negotiating committee or

770 the six railroads of the negotiating committee?

A. That is right.

Q. And is the first letter a transmittal from Chairman Padrick to all of the 21 terminal lines?

A. It is.

Q. And then Pages 4 and 5 have to do with a report from Mr. Dean, who was the baggage, general baggage agent of the New York Central dealing with a special baggage problem, was it not?

By Mr. Keating: Objection, your Honor. Specifically he was the general baggage agent of the LaSalle Street Station.

By Mr. Freeman: You are right, and I am sorry.

By Mr. Freeman:

Q. Mr. Dean was general baggage agent of the LaSalle Street Station, was he not?

A. That is right.

Q. And these pages are a report from him with respect to a baggage problem the committee was considering?

A. That is right.

Q. And the last few pages have to do with a memorandum of July 21, 1954, prepared by the committee, indicating the size of the transfer job and transmitted
771 to prospective bidders on the contract, is that correct, Mr. Nelson?

A. That is.

Q. And were these papers prepared in the course of the committee's deliberation and transmitted out to the Chicago Terminal Lines for their information and to demonstrate the progress that had been made to date?

A. That is right. Mr. Dean's letter, that was his own.

Q. Mr. Dean's letter was not the committee's work, but it was transmitted to the terminal lines for their information?

A. That is right.

By Mr. Freeman: I offer in evidence as Plaintiff's Exhibit No. 33 the document that has previously been marked as such.

By Mr. Meserow: I object on the grounds it is not binding on my clients, your Honor. It is hearsay.

By the Court: I think we are getting into the terminal activity. I don't know whether it is binding on anybody except the members of the terminal.

772 By Mr. Freeman: Your Honor, Mr. Nelson is a member of the negotiating committee.

By the Court: I want to hear from Judge Thompson on that situation if he has any objection to it.

By Mr. Thompson: We have no objection on behalf of the railroad defendants or the railroad presidents.

By the Court: All right; I believe it can be admitted as against all of them, because if it deals with the Keeshin offer and with the Parmelee offer, I think it is properly admissible.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 33.)

By Mr. Freeman:

Q. You will recall, Mr. Nelson, that yesterday you testified that you were very certain that the Keeshin proposal that was being considered by the committee on January 5 had a rate lower than the $1.20 rate for the first year that Keeshin subsequently proposed because of the question of loading and unloading trailers, is that right?

773 A. I have subsequently found I was in error in reviewing the file. His original proposal was $1.20.

774 Q. Isn't it true, Mr. Nelson, that Keeshin's original proposal which was rejected by the committee on January 5, 1955 was the same proposal which was accepted by the committee on June 3, 1955?

By Mr. Thompson: If the Court please, it requires a lot of patience to tolerate this misconduct of counsel. There is no basis for any such speech to the witness.

By the Court: I will sustain the objection.

By Mr. Thompson: Ask him whether or not the December proposal—He can ask the facts without stating all of these things in speeches.

By the Court: That is right. I sustain the objection because, in the first place, if the offers were in writing, they are the best evidence, and in the second place it is

an overall analysis and conclusion, as to were they the same, and if he says yes or no, he has to explain every difference in every detail.

By Mr. Freeman: I want to ask him if they were the same.

775 By Mr. Freeman:

Q. Were the proposals by Keeshin—was the Keeshin proposal the same on December 15, 1954 and as modified in January of 1955, straight through the negotiations?

By Mr. Thompson: Now, if the Court please, the proposals are all in writing, the December 15 proposal, the January 15 modification of the proposal, the April 6 amplification of the proposal, all three of them are in writing, and it can be readily compared.

By the Court: The objection will be sustained for one more reason besides that. The witness already testified that he had—that he was displeased with some features of it, and he discussed it and proposed the changes.

Am I correct in that?

By the Witness: You are right, sir.

By the Court: Sustained.

By Mr. Freeman: We will make an offer of proof after we get through with Mr. Nelson pursuant to our truncated procedure, but I will attempt to prove it through this

776 document.

By Mr. Freeman:

Q. Mr. Nelson, did the committee, including you as a member of the committee, summarize the Keeshin proposal as it was before the committee on January 5, 1955, as follows:

"Keeshin: This company has submitted a proposal for the handling of both passengers and checked baggage which is slightly reduced from the price which we are paying or $1.20 with the price of the coupon

tied into an escalator clause similar to that which we have with Parmelee today. The proposal contains a provision whereby station forces would load and unload trailers which would be hauled between the stations by tractors, and the proposal indicates more transfer trips than are presently being made. We would call your particular attention to the fact that this would be an increase in the work of the station forces. The Keeshin plan outlines purchase of new station wagon-type equipment to be built by a Detroit
777 organization, and the hand luggage would be placed on top of the vehicle. Also, the vehicle is radio equipped and air conditioned, the radio facilitating dispatch of cars between stations."

Do you recall that summary of the Keeshin proposal?

A. That is the progress report to date. It was still in the state of negotiation. There was nothing definite.

Q. I want to ask you, Mr. Nelson, whether you recall any change in the Keeshin proposal prior to June 3, 1955, as against this summarization?

By Mr. Thompson: If the Court please, again we have the documents before him, the April 6 letter which takes care of it.

By the Court: Read the question.

(Whereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. In so far as checked baggage is concerned, sometime during the early part of April we did receive a letter from Mr. Keeshin modifying his original proposal, in that his proposal would not necessarily mean that the railroads would—that the personnel at the station would load and unload their baggage.

778 By Mr. Freeman:

Q. But were you still in doubt as to whether that

issue had been determined at the May 19 meeting?

A. That letter sufficed to us to prove he was willing to take care of the loading and unloading of his baggage in the April letter.

Q. Did he agree to take care of the loading and unloading of the baggage after June 3 of 1955?

A. Yes, definitely.

Q. He definitely did?

A. All the way through after his April letter, in which his letter I make mention to in April definitely states he will load and unload his baggage.

Q. Mr. Nelson, you are now very positive that it was definitely determined as a consequence of Keeshin's April 6 letter that Keeshin's employees would load and unload trailers and not the railroad employees?

A. Insofar as the Grand Central Station is concerned, which I represented, yes.

Q. They why did you write this letter that has been identified as Plaintiff's Exhibit No. 33, or rather No. 32, in which you say:

"I feel that Keeshin is hedging from the original
779 arrangement of his own people loading and unloading trailers."

A. Because as I just previously stated, it was definite in my mind that he was going to load and unload at the Grand Central Station.

Q. Was the issue determined as of June 23 when you wrote this letter, or didn't you know?

A. Well, as far as I was concerned, the Grand Central Station, he was loading and unloading baggage there, and his letter of April 6th or the early part of April was sufficient to my mind that that was going to happen, and that did happen.

Q. Mr. Nelson, did Mr. Keeshin in his first proposal of a contract some time in July of 1955 propose to the railroads that they load and unload the baggage?

A. He had made that proposal, but it was not acceptable to me.

Q. And it was not acceptable to the other railroads, was it, either?

A. I don't know. I am talking about the Grand Central.

By Mr. Keating: Objection to that, about the other railroads.

By the Court: Sustained.

By Mr. Freeman:

Q. Did Mr. Keeshin in July of 1955 over a month
780 after he had been selected propose that the railroad employees load and unload these trailers?

A. I do not recall that.

Q. You don't know?

A. No, I don't.

Q. I thought you had answered it yes before.

A. No; I don't recall that.

By Mr. Keating: Your Honor, I object to that. It is for the Jury to remember what Mr. Nelson answered, not Mr. Freeman's comments.

By Mr. Freeman: I assume the jury will remember.

By Mr. Keating: Well, may I have a ruling?

By the Court: You assume the jury will pass upon it, and that is correct. I don't comment on the evidence.

By Mr. Freeman:

Q. You will also recall, Mr. Nelson, that we discussed the question of whether or not there was any dissatisfaction with the Parmelee service which caused the committee to be organized and negotiate; you recall that conversation yesterday?

781 A. Yes, sir.

Q. Is it true that in describing the size of the

job that had to be done to prospective contractors that the committee prepared a little summarization which included the following paragraph, and I read it from the first page of this summary as follows:

"We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other. Notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary, and because the greater portion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroad. It is thereupon necessary to canvass the companies capable of handling such a transfer of passengers and baggage and whose reputations and vehicle equipment would indicate the ability to satisfactorily perform
782 the service and at a fee attractive to the rail carriers who, as stated above, absorb the charges accruing to the Chicago transfer."

First, did that express your point of view at that time?

By Mr. Thompson: If the Court please, I assume this was a question addressed to the witness. Notwithstanding it was read with the arm waving and histrionics that are going along with all of this.

By Mr. Freeman: This a failing I have.

By Mr. Thompson: I should say it is a failing, and you ought to correct it.

By Mr. Freeman: I won't.

By Mr. Thompson: I am sure that is true. I object to the question being put in that fashion by delivering a Fourth of July speech and then saying, "Does that accord with your recollection"; and the document is in evidence

and speaks for itself, and we need no such time wasting speech.

783 By the Court: I received it in evidence on a theory that it is a genuine original document in the ordinary course of dealings by the group.

By Mr. Freeman: I could read this document to the jury, but I want to read it to the jury and find out from this witness whether it represented his view currently at that time.

By the Court: I don't think it makes any difference whether it represents his view or not. I let it in as proper and admissible. It is everybody's view now.

By Mr. Freeman: All right. I withdraw the question and you don't have to rule on it. But I do—

By Mr. McConnell: Your Honor, he has a right to read. He didn't interpolate anything in that question. He read from evidence and asked this witness whether or not it accorded with his view.

By the Court: He has a right to read the entire document to the jury as everybody's view because it is in evidence.

784 By Mr. McConnell: Certainly. There is nothing in that reading, and if Judge Thompson doesn't like the way he reads it, that is too bad.

By the Court: I don't mind the intonations. I am passing upon the substance of it.

By Mr. Freeman: Let me see if I can advance this issue a little further.

I would like to have marked for the purpose of identification as Plaintiff's Exhibit 34 this one-page memorandum dated January 7, 1955, coded as B&O-70.

(Thereupon said document was marked Plaintiff's Exhibit No. 34 for identification.)

By Mr. Freeman:

Q. Are you familiar with this memorandum signed by R. E. Coleman and addressed to Mr. Whittington in Baltimore?

By the Court: Is this in evidence, Mr. Freeman?

By Mr. Freeman: No, I am identifying it.

By the Witness:

785 A. That is right.

By Mr. Freeman:

Q. Did you assist in the preparation of that memorandum?

A. I did.

Q. Was it prepared in the ordinary course of your railroad functions?

A. That is right.

Q. And was it sent to Mr. Whittington as a memorandum of the points of view of your department here in Chicago?

A. That is right.

Q. Was it also sent on to the files in the regular course?

A. That is right.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 34.

By the Court: This is a personal memo from him to his superior?

By Mr. Freeman: No, it is a memorandum from his department to his superior in Baltimore.

By the Court: He participated in it?

By Mr. Freeman: Yes.

By Mr. Thompson: Well, it is a letter of trans-

786 mittal from his superior in Chicago to their superior in Baltimore, transmitting this document that has just been admitted in evidence.

By the Court: It may be received against his company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 34.)

By Mr. Freeman:

Q. Does this memorandum represent your views as of January 7, 1955?

By Mr. Thompson: It is nothing but a letter of transmittal. There are no views in it.

By Mr. McConnell: I object to counsel's statement of the contents of the document.

By the Court: I will let him answer.

By the Witness:

A. Yes, sir.

By Mr Freeman: Then I would read to the jury this remark. This is to Mr. J. F. Whittington, January 7, 1955, Chicago, Illinois:

"As previously informed you, the Chicago Terminal
787 Lines early last year appointed a sub-committee to make a survey of the Chicago transfer situation, particularly from an economic rather than a service standpoint, as the latter has been satisfactory in its handling by the Parmelee Transportation Company.

"For your perusal I am enclosing copy of the report of this committee under the chairmanship of Sidney N. Bone, passenger traffic manager of The New York Central Railroad, to Chairman E. B. Padrick.

"This report is just about as good a resume of the actions that have taken place as we could report separately. In addition, we are enclosing copies of the proposals referred to in Mr. Bone's report covering the F. Landon Cartage Company, J. L. Keeshin, and R. E. Dean, general baggage and mail supervisor, La Salle Street Station, Chicago.

"Should any of the other contractors subsequently submit proposals, even though the deadline is long past, we will, of course, see that you are kept fully informed."

Signed by R. E. Coleman and a copy went to Mr. Eichner.

788 By Mr. Freeman:

Q. Who was Mr. Eichner?

A. Manager, mail, baggage and express in Baltimore, of our company.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 35, this original letter addressed to Mr. Scheeder of the Parmelee Transportation Company, under date of September 8, 1954.

(Thereupon the said document was marked Plaintiff's Exhibit 35, for identification.)

By Mr. Freeman:

Q. I show you this letter which has been identified as Plaintiff's Exhibit 35, Mr. Nelson, and I ask you whether this letter was sent from your department to Mr. Scheeder?

A. It was.

Q. Did you participate in the preparation of that letter?

A. I did not.

Q. Was that letter prepared by your superior, Mr. Coleman?

789 A. That is right.

Q. Do you recognize his signature?

A. I do.

Q. Is it his signature?

A. It is.

Q. And was this letter prepared in the regular course

of the Baltimore and Ohio's functions and of your department's functions?

By Mr. Owens: Objection. It wasn't prepared by him, your Honor. It was prepared by someone else. He has no knowledge of this thing.

By Mr. Freeman: I can bring Mr. Coleman in, but I think—

By the Court: If he knows, he may answer.

By the Witness:

A. It was.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 35.

By Mr. Meserow: May I see that, please?

By Mr. Freeman: No one has seen this.

By Mr. Meserow: Your Honor, I am going to object on behalf of Railroad Transfer Service.

790 This is dated September 1954. We weren't in existence until a year later.

Secondly, as to defendant Keeshin, it is not binding on Mr. Keeshin at all. I don't think it has anything to do with this case. It is dated September 8, 1954, and is beyond any realm of the public injury or the time involved in the issues of this case.

By Mr. Freeman: You will recall, your Honor, that this witness testified that he received complaints against Parmelee. I am trying to demonstrate the facts with respect to that situation.

By the Court: It may be received only for—

By Mr. Thompson: If the Court please, may I state an objection?

By the Court: Oh, surely. I am sorry, Judge Thompson.

By Mr. Thompson: I am sorry to interrupt your Honor.

By the Court: Oh, no. I thought that was it. I heard

the objection and I didn't hear any more. I am
791 sorry.

By Mr. Thompson: We object to this as an expression of an opinion in an isolated incident, of course, which doesn't express any more than if you had a letter expressing criticism in an isolated incident. One incident proves nothing pro or con, and so we think this has no probative value; that it is simply cluttering up the record.

It is an expression of opinion by an individual and is not binding on anybody that is a defendant here except possibly the B&O, and I don't know how it can be binding on them except as an individual's opinion of what happened on one day in one transaction.

By the Court: I will let it go in as against the Baltimore and Ohio, only on the basis that it might have some tendency to impeach the witness, that is all.

By Mr. Thompson: Of course—

By the Court: I agree with the general conclusion that pertains to only one transaction on one day.

792 By Mr. Thompson: And of course, I should think this opens the door now to a whole truckload of letters criticizing the service on different days of the Parmelee—

By Mr. Freeman: Let's see that.

By Mr. Thompson: (Continuing) —of the Parmelee institution, and also a truckload of letters pro and con on the Keeshin service. There is no institution that operates day after day that somebody doesn't either find some excuse for complimenting them or criticizing.

It seems to me we are getting into a collateral issue here which, even if relevant and material, is opening the door to a frightful waste of time and proves nothing pro or con.

By Mr. Freeman: It has to do with this witness' testimony.

By the Court: I think the witness covered this pretty well yesterday. I will let my ruling stand.

By Mr. Freeman: This is addressed to Mr. W. A.
793 Scheeder, vice president, Parmelee Transportation Co., 300 North Des Plaines Street, Chicago, Illinois. This letter is dated September 8, 1954:

"Dear Bill:

"Your organization handled a big job in a most effective manner Sunday afternoon, September 5.

"You transferred almost 400 service men including 300 with duffle bags from our station to the North Shore and Union Stations, dispatching them all within thirty minutes.

"Real teamwork was indicated including the advance planning which obviously was necessary, an all-out effort by your agents Barkey and Kavanaugh on duty here, and complete cooperation on the part of every driver involved.

"My associates have called this outstanding performance to my attention and we want you to know that the efforts of all concerned in your organization
794 are greatly appreciated.

"Yours truly,

"R. E. Coleman, Passenger Traffic Manager, Baltimore and Ohio Railroad Company."

795 By Mr. Freeman:

Q. Now, Mr. Nelson, you also attended a meeting of the Chicago Terminal Lines on June 13, did you not?

A. I did.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit 36, this two-page memorandum dated June 13, 1955, and coded as

B&O-13 and -14, previously identified as Nelson Exhibit 20 in his deposition.

(Thereupon said document was marked Plaintiff's Exhibit No. 36 for identification.)

By Mr. Freeman:

Q. Is Plaintiff's Exhibit 36 for identification a memorandum prepared by you, Mr. Nelson?

A. Yes, sir.

Q. And was this prepared immediately after your meeting on June 13, 1955 with the Chicago Terminal Lines?

A. It was prepared after the meeting.

Q. Does it truly and correctly set forth your recollections of what happened or the major issues of what occurred at that meeting?

A. Apparently it does.

796 Q. And was it prepared in the regular course of your functions for the Baltimore & Ohio Railroad?

A. That is right.

Q. And was it transmitted to Baltimore for information to your home office?

A. That I do not recall because there is nothing here. It is just a memorandum. Whether there was a subsequent letter of transmittal or not, I don't know.

Q. Was it regularly filed in your office?

A. It was filed in our files.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 36.

By Mr. Thompson: If the Court please, this is a memorandum which purports to report on certain things that happened at this meeting. Among them is a third paragraph in the memorandum which is a reporting of hearsay. Of course, the witness himself couldn't testify to

this subject because it is a reporting of hearsay, hearsay on hearsay here, and that being true, the document containing that extraneous matter is not admissible in evidence.

The rule which permits records of a corporation to
797 be received if made in the regular course of business, and if it is the regular course of business to make the record, dispenses only with the requirement that you do not have to produce everybody back of it. It is an amplification of the old shop rule, and it does not permit hearsay through a document any more than it permits hearsay from a witness on the witness stand.

By the Court: That is a correct statement of the law. Which paragraph did you say?

By Mr. Thompson: The third paragraph.

By Mr. Freeman: This witness had prepared a memorandum of what transpired at that meeting, and that is all we are attempting to establish, and whatever transpired was an event.

By Mr. Thompson: Mr. Alms is available and Mr. Alms can testify directly. This witness can't testify to hearsay and have it binding on anybody.

By Mr. Keating: Mr. Alms is not a party to this suit nor is his company nor is the other individual named in there.

One of the requirements of the shop rule is that
798 the writer of the record must be reporting something that he has a duty to report in the furtherance of his company's business. I think on the face of it, paragraph 3 shows that that is not the situation here.

By Mr. Freeman: Mr. Keating has given you the reason why the memorandum must be accepted. Mr. Nelson was reporting a fact which was in furtherance of the B&O's business.

By Mr. Keating: He is reporting a fact of some third person, your Honor.

By the Court: Objection will be sustained, unless you delete that one paragraph.

By Mr. Freeman: Oh, I wouldn't delete the one paragraph. I would like an opportunity to be heard on this. Of course, if your Honor has already ruled—

By the Court: I will be very happy to hear you on it.

By Mr. Freeman: Well, this is a memorandum—

By Mr. Keating: Outside the presence of the jury, Mr. Freeman?

By Mr. Freeman: I can't say anything more that
799 will be prejudicial to the jury than you have, and certainly I will restrain my remarks so it won't be prejudicial.

By the Court: Proceed.

By Mr. McConnell: Let me suggest that this is a well recognized exception to the hearsay rule. The Circuit Court and Court of Appeals has squarely ruled on it. I can get the case here as soon as I get to my office.

They have ruled that reports made of what is heard in the ordinary course of business, even though it is hearsay, is admissible under the shop rule exception.

By Mr. Freeman: Yet, and the fact that the report is of an oral declaration doesn't make it hearsay. It is the occurrence of an event. Somebody made a statement, and that is all that is being recorded.

We would like an opportunity, if your Honor will permit us, to supplement this argument, if you will withhold your ruling.

By the Court: I will withhold my judgment until
800 you show me a citation on it.

Secondly, this goes into the conspiracy element, that paragraph, and has nothing to do with the issue of public injury.

By Mr. Thompson: That is right.

801 By Mr. Freeman: I am willing to admit that this goes into the conspiracy issues, and one of the parties named is a co-conspirator, not named as a defendant.

By the Court: On that basis—

By Mr. Freeman: If you are going to exclude it on that basis, I can possibly understand—

By the Court: That is my basis. The other one I could forego because there is nothing too seriously detrimental, either one way or the other, but on the question of hearsay, I think the objection is good, but I am willing to hear a citation on it. But on the question of conspiracy, I definitely rule out that part of it.

By Mr. Freeman: Then let us see if we can clarify the record when we come back this afternoon so that we know the basis of your Honor's ruling.

By Mr. Freeman:

Q. Mr. Nelson, did you have any knowledge during the course of these negotiations of the fact that the Baltimore and Ohio Railroad Company had lost a substantial amount of money in the Keeshin Freight Lines reorganization.

802 By Mr. Thompson: Now, if the Court please—

By the Court: Objection sustained.

By Mr. Thompson: Not only that, but I think it is high time to admonish counsel to observe some of the reasonable rules of the Court.

By the Court: Yet, that is definitely out of line.

By Mr. Freeman: I don't understand why it is out of line, and if you will explain it, I will abide by your judgment—certainly not Mr. Thompson's constant irritation.

By the Court: I will explain it to you in this way. Whatever motivated the Baltimore and Ohio to enter into the Keeshin contract, whether they have or have not lost any money in the Keeshin transaction before, hasn't any

element of admissibility or relevancy to the question of public injury, not at all.

By Mr. Freeman: Your Honor, it is our position
803 that the extent to which an arbitrary reason or arbitrary motivations were pursued by the Baltimore and Ohio Railroad in selecting Keeshin, to that extent we have delved into the problem of public injury even as you have defined it.

By the Court: I will not comment on that. I don't approve of it, and I sustain the objection.

By Mr. Freeman: May I just say one thing further? It does seem to me that every time I ask a question that will hurt the defendants' position, Mr. Thompson immediately gets up and says admonish me, I am being prejudicial. Everything in this case is prejudicial to the defendants.

By the Court: I don't approve of any description of any basis for objections except on a legal basis, and I want the jury to know that.

I told you when I first talked with you that counsel's statements are not evidence, and they certainly ought not to get into personal matters. We are conducting a
804 lawsuit here, and all I am interested in is ruling on the propriety or impropriety of evidence.

I don't want to answer counsel's statements on that because by answering it, I would comment on my own views, and I don't want to comment except on the basis of law.

By Mr. Freeman: I don't either, but I think once a day I have to comment on the multiple insults.

By the Court: I want to say to all counsel, we have been together now for five days. We have reiterated our respective views on all the subjects. We understand them, or we should understand them, and we ought not to admonish each other and we ought not to bark at the Court. We are doing the best we can with the job, and we are going to

try to carry it to a conclusion so that it will be reviewable intelligently, according to my judgment.

By Mr. Freeman: I would like to have marked for
805 the purpose of identification as Plaintiff's Exhibit 37 a certified copy of a petition of the Baltimore and Ohio Railroad for leave to intervene in the matter of Keeshin Freight Lines in reorganization in the Federal Court of this District.

By Mr. Meserow: Your Honor, I object—

By Mr. Thompson: Wait a minute.

(Thereupon the said document was marked Plaintiff's Exhibit 37 for identification.)

By the Court: The Court will sustain the objection for the grounds already ruled on, and it ought not to be repeated.

By Mr. Freeman: I just want this document in the record, and I understand your ruling.

By Mr. McConnell: I am at a loss to understand why the financial stability of this man hasn't an interest to the public. If he can't perform his duties because of his financial difficulties that is certainly relevant.

By the Court: I think we ought to confine our
806 examination to one counsel of one witness so we can follow it. I have ruled on your associate, and if he wants to argue some more, fine.

By Mr. Freeman: I don't like to argue after the Court has ruled.

By Mr. Meserow: May I answer Mr. McConnell?

By the Court: No, you may not. I have answered him.

By Mr. Thompson: That will make it all the worse if you answer him.

By Mr. McConnell: I agree with that statement.

By Mr. Thompson: That is right. Your statement was a falsehood, and you know it.

By Mr. McConnell: It wasn't a falsehood and I don't like the charge. I move to strike it.

By the Court: I will let one man examine a witness and discuss it and approach the Court. I can't argue with two lawyers, and I don't propose to.

807 By Mr. Freeman:

Q. Mr. Nelson, after you inspected the Keeshin equipment, which you said you did on June 2nd, did you have a conference with Mr. Richard E. Coleman, your superior?

A. No, I don't believe we had any particular conference.

Q. Did you have any discussion with him?

A. Well, he left the meeting after inspecting the equipment, and I don't think he came back that day at all.

Q. Did he go and inspect the equipment also?

A. Yes, sir.

Q. Do you know what his views were with respect to the Keeshin proposed equipment?

A. No, I do not recall what his views may have been.

Q. Let me ask your views then.

Were you opposed to putting baggage on the top or roof of the station wagons, as had been proposed by Mr. Keeshin?

By Mr. Thompson: Well, if the Court please, this was never done so I don't know why we should be wasting our time about going into something that never hap-

808 pened any time or in the future.

By Mr. McConnell: I object to counsel getting up here and testifying on these issues. Every time he makes an objection, he gets up and testifies.

By the Court: I will sustain the objection to that form of an objection.

The witness may answer that question, if there was or wasn't.

By Mr. Freeman: Having in mind Mr. Thompson's coaching.

By Mr. Keating: I object to the remark of counsel.

By the Court: It may be stricken.

By Mr. Keating: Thank you.

By the Witness:

A. There were certain objections, but not entirely to handling the baggage on top, and I think I discussed it at the time with Mr. Keeshin or one of his associates there, my ideas, my opinions.

By Mr. Freeman:

Q. Did you also have objections to passengers being carried in the third seat because of the difficulty of getting in and out of the vehicle?

809 A. No strenuous objections. I said it would be advisable not to have it. It would be better if they didn't. As I recall, Mr. Keeshin said he wouldn't have any passenger sitting in that third seat in the station wagon.

Q. Were these station wagons standard pieces of equipment?

A. Apparently so. They looked like standard equipment.

Q. Regular Ford or Mercury station wagons?

A. Apparently so. They looked like it.

Q. Do you know whether or not the station wagons were the same equipment that had been proposed by Mr. Keeshin in his December, 1954 proposal?

A. Well, I would presume so. I didn't see him in December so —

Q. In an attempt to be fair to you, did he propose station wagons in December, 1954?

A. I believe that was in his original proposal.

Q. Did you have any conversations, Mr. Nelson, with other members of your negotiating committee during the course of these negotiations?

A. Not other than at the meetings.

810 Q. Was there any—

A. Because I very seldom contacted them.

Q. You didn't call them on the telephone?

A. No.

Q. Nobody called you on the telephone?

A. No.

Q. Did you feel that there was something brewing in the background of these negotiations?

A. What do you mean by "brewing"?

Q. Were you informed at these committee meetings that there had been intervention by Mr. Cross in the case of several railroad presidents?

By Mr. Meserow: Objection, your Honor.

By Mr. Thompson: Objection.

By the Court: Sustained, and it may be stricken, and he need not answer.

By Mr. Freeman: I will make an offer of proof on that.

By Mr. Freeman:

Q. Were you of the opinion, Mr. Nelson, at the time of these negotiations in May and June that there was a matter of policy involved that required a decision from your principal officers in Baltimore?

A. Not a question of policy involved. We have no

811 authority here in Chicago to make policy. My duty was merely to inform them as to what was occurring at these various negotiating meetings.

Q. You had no authority to make the decision for or against one of these contractors?

A. That is correct.

Q. The decision had to be made in Baltimore?

A. That is correct.

Q. Would that decision have to be made by Mr. Simpson, the president of your company?

A. I wouldn't know.

Q. Did you regard the decision as one of a matter of policy?

By Mr. Thompson: I object to that, if the Court please, as calling for an opinion.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Was there something in making this decision other than a comparison of the proposals of Keeshin and Parmelee?

A. I couldn't answer for the gentlemen in Baltimore who would make the policy.

Q. As far as you were concerned, I am asking.

A. I wouldn't know.

812 Q. You don't know?

A. No, I don't know.

Q. Did Mr. Whittington ever advise you that there was a question of company policy involved here?

A. Definitely not.

Q. Did Mr. Whittington ever have any conversations with you on the transfer matter?

A. I doubt it, because of my memorandums being complete; I assume they were complete.

Q. How long, Mr. Nelson, were you a member of this Chicago Terminal Lines as a representative of the Baltimore and Ohio Railroad?

A. Since January 1, 1949.

Q. And from January 1, 1949, through 1955 you attended all or most of the meetings, did you?

A. That is right.

Q. And you participated in all or most of the negotiations on the Chicago transfer situation?

A. That is correct.

Q. Were there any meetings that were held in 1954 with contractors on which you did not prepare memoranda and transmit them to Baltimore?

A. No, sir.

Q. You transmitted a memorandum to Baltimore, for example, when you had a meeting on September 15, 1954?

813

A. Well, the files would show whether I did or not. It was usually my policy, if there was anything of any importance, to prepare a memorandum and forward it on to our Baltimore office.

814 Q. I will bring the file to you, or you may look at your own file, and you advise us if there is any memorandum that you sent to Baltimore covering any of the negotiating meetings in 1954.

By Mr. Thompson: If the Court please, we have been all through this in the pre-trial deposition taking. We have examined the file. Mr. Freeman has had them all furnished to him, and he knows there are none there, and why waste the time?

If there is one, let's have it produced.

By Mr. Freeman:

Q. Do you know of any memorandum that you prepared, Mr. Nelson, that was transmitted to Baltimore covering any of the negotiating sessions in 1954?

A. Well, the files would have to speak for themselves. There would either be a penciled memorandum, which I did not have typed up into a permanent memorandum, or there would be a typed memorandum. If neither one appears in those files, I made no memorandum.

Q. How many negotiating sessions did you have in 1954; can you remember?

A. I don't recall.

815 Q. Were there as many as ten?

A. I don't have any idea how many we had.

Q. Were there more than two?

By Mr. Thompson: The witness has answered. There is no use speculating and guessing any further.

By Mr. Freeman: I think that is right. I have nothing further on Mr. Nelson. Thank you.

By the Court: All right; do you want a little recess?

By Mr. Thompson: No.

By the Court: I thought maybe you wanted to talk to counsel.

By Mr. Thompson: No.

By the Court: All right, proceed.

Cross Examination by Mr. Thompson.

Q. Mr. Nelson, I think you just stated that you were active in these negotiating committee meetings from January 1, 1949 through the 1955 negotiations?

A. That is right, on the Chicago Terminal Lines' committee and subsequently the sub-committee.

816 Q. What was the event or occurrence in 1954 in January that stimulated the appointment of this committee of railroad terminal stations?

A. Well, once again we had been approached for an increase in our coupon rate, which was something that we went through every year preceding Parmelee's and the railroads' expiration of contract on June 30th, and this time it was to be $1.25, as I recall, if they were to continue in business.

Q. Was there a demand for $1.25 or a threat of discontinuance of the service?

By Mr. Freeman: I object to that characterization.

By the Court: Read the question, please.

(Thereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. Well, if you consider the fact, as I recall it, that he said he needed $1.25 to continue in business as being a threat of discontinuance — I wouldn't know what he had in mind.

By Mr. Thompson:

Q. Did the committee have presented to it prior
817 to this time a request for an increase in the coupon charge, that is immediately prior, a year or two prior, I mean?

A. Well, each year practically we had Parmelee people approach us stating that they required an increase in the coupon rate previous to their negotiating with their union people.

Q. Do you recall what the coupon rate was in the period preceding January 1, 1955, or rather, 1954, at the time the demand for $1.25 was made? What was the rate then?

A. $1.05.

Q. Do you recall what year that $1.05 rate was fixed?

A. I think it was in 1952.

Q. Prior to that it had been what?

A. $1.00.

Q. And when was the preceding increase in coupon rate?

A. Sometime in the late '40's, I think 1948 maybe it was, that it was 85 cents.

Q. From 85 cents to a dollar, is that it?

A. Yes.

Q. I assume you did not participate in the negotiations which resulted in this increase from 85 cents to $1.00?

A. I did not.

818 Who was the representative of the Baltimore and Ohio on the terminal lines group prior to your taking over?

A. My predecessor was Mr. Slottman. He is deceased now, retired and deceased.

Q. What was the situation with respect to whether the labor situation was stable or unstable with the Parmelee group?

By Mr. Freeman: I object to that characterization. I think this is asking this witness too much. He is not a labor expert, nor does he know about the labor negotiations.

By the Court: You mean as far as negotiations, Judge Thompson?

By Mr. Thompson: I mean as far as the actual report to the terminal lines each year.

By Mr. Freeman: He hasn't asked that question.

By Mr. Thompson:

Q. Was it reported to the terminal lines by the Parmelee people preceding June 30th, each year as to their dealings with their labor people on their wage rate?

819 By Mr. Freeman: I object. The best evidence would be the reports. If there were any reports, let's produce them.

By the Court: Overruled. The question is if he knows.

By the Witness:

A. Well, each year as they approached us for an increase they stated that they would have to have some kind of an idea what the railroads would do in connection with their proposal so that they could negotiate their union contract, which evidently was on a year-to-year basis.

By Mr. Freeman: I move the answer be stricken. He doesn't know. He is just speculating.

By the Court: The last part may be stricken where he said, "which evidently was on a year-to-year basis".

By Mr. Thompson:

Q. Was this matter of labor negotiations reported to the lines made every year prior to June 30th?

By Mr. Freeman: I object. If there are reports, let's have them. We have no objection to producing them if they want them. However, I know of none.

820 By the Court: Overruled.

By the Witness:

A. Well, each year the Parmelee Company representative, whoever it might be, would state that they were negotiating with their people.

By Mr. Thompson:

Q. Was there any period of time when there was a tentative arrangement made to handle your transfer business if there was was a strike resulting in Parmelee?

A. Well, there is one instance in the late forties which didn't come about, and then again in the early fifties we had an actual strike which occurred in April and wasn't terminated, as I recall it, until some time in the middle of December.

Q. That is in 1950?

A. 1950, yes.

Q. And preceding that were there matters brought before the Terminal Lines group that there was a possibility of a strike and tentative arrangements made to handle your traffic?

A. I think that was in 1946 or 1947. It was previous to my being in this position, but I recall the correspondence in the office.

Q. Did it happen also in 1948 and 1949 after you 821 did get on the group committee, or do you remember?

A. No, just in 1950 when the actual strike took place, as I recall.

Q. In 1954 when this request was made for $1.25, had you sat with the committee that talked with Mr. Markin on the Parmelee Company in December and heard his oral request for this increase of $1.25?

A. No, I hadn't. It is possible my associate did, Mr. Coleman. I didn't attend that.

Q. Did you receive a written communication in January, 1954 making this request or demand?

A. I believe the association did, the Western Passenger Association did, or the passenger association of the Chicago Terminal Lines.

By Mr. Freeman: I move the answer be stricken. The question was did he, and the rest is speculation.

By the Court: The rest may be stricken. He is talking about a written document, and it should be produced.

822 By Mr. Thompson:

Q. Mr. Nelson, while we are waiting for this document, was it the practice of some agency to communicate to the Terminal Lines these matters of general interest to them?

A. Yes, through Chairman Padrick who was chairman of the Chicago Terminal Lines' committee.

Q. Mr. Padrick was an officer of what corporation, or do you know, or association?

A. Chairman of the Western Passenger, Transcontinental Passenger Association.

Q. And that was his employment, wasn't it?

A. That is right.

Q. Who was chairman of the corresponding group for the eastern group of railroads?

A. Well, there was a chairman of the Trunk Lines Central Passenger Committee in New York, Mr. Winkler, although I don't think Mr. Winkler was in at these early stages.

Q. This morning there was shown to you Plaintiff's Exhibit No. 33, and it was said in the question, "Is this a letter signed by Mr. Padrick?"

That is the letter of January 11, 1955, transmitting information respecting that January meeting. Is it

823 signed by someone else other than Mr. Padrick?

A. Yes; Mr. A. J. Winkler who I stated was chairman of the Trunk Lines Central Passenger Committee in New York.

By Mr. Freeman: Are you suggesting, Mr. Thompson, it wasn't signed by Mr. Padrick?

By Mr. Thompson: No, certainly not.

By Mr. Thompson:

Q. So Mr. Winkler and Mr. Padrick, both their names appear on this?

A. That is right.

Q. And that is transmitting a communication to personnel of railroads above that belong to both groups, the Winkler group and the Padrick group?

A. That is right.

Q. This Terminal Lines, I think you may have tried to describe it yesterday, and it is a little difficult to describe, but the group called the Chicago Terminal Lines, what is it composed of?

A. It is not an official or formal organization. It is just a representative from each of the railroads who meet when we have common mutual problems that we discuss. It is not a formal organization.

824 Q. How are the meetings usually called if someone has a problem they want discussed by all the lines?

A. Well, they usually write to Mr. Padrick, and if he feels the one subject is sufficient in importance he will call a meeting or hold it over until he gets a number of subjects and then call a meeting of the Chicago Terminal Lines.

Q. He has his office where?

A. In the Union Station.

Q. And Mr. Winkler, who represents the other railroads, if he still continues in the office, his office is in New York, is it?

A. That is right.

Q. Was this just a matter of convenience that Mr. Padrick was the clearing house for the calling of these meetings?

A. That is right.

Q. It was no official organization—he wasn't elected as an officer?

A. No, sir; I say it is no formal organization.

Q. All right.

I direct your attention to a document, which I will have marked as Defendants' Exhibit No. 5, for identification.

825 (Thereupon said document was marked Defendants' Exhibit No. 5 for identification.)

By Mr. Thompson: I might say to counsel and to the Court the separate document to which I now want to refer is in this, and there is no use in having it in here two or three times.

826 By Mr. Thompson:

Q. I call your attention to this document so marked.

By Mr. Freeman: What is the date of it?

By Mr. Thompson: This is the Chicago Terminal Lines minutes of April 7, 1954, which incorporates the preceding things we are going to talk about. It is coded as A, New Series, 94 and on out for quite a number. It runs clear through to No. 127.

By Mr. Thompson:

Q. Is that a document which was transmitted to the participating lines of the Chicago Terminal Lines group that reports on the meeting or the minutes of a meeting of April 15 and April 16, 1954?

A. That is correct.

Q. Directing your attention to a document included in those minutes, which purports to be a letter addressed to Mr. E. B. Padrick, and which is signed Parmelee Transportation Company, do you recall that letter being incorporated in the minutes that were transmitted to you?

By Mr. Freeman: I object. Mr. Thompson is assuming these minutes were transmitted to him, and I don't
827 understand the witness has so testified.

By Mr. Thompson: I thought I asked him a mo-

ment ago. I am sorry if I didn't.

By Mr. Thompson:

Q. These minutes were transmitted to you and all the other representatives, were they not?

A. Yes, sir. Insofar as our office is concerned, Mr. Coleman's name appears as being addressed.

Q. Was this letter—does it come back to your mind that that letter was incorporated and was considered at a meeting of the terminal lines?

A. I would say it was attached.

Q. Do you remember this letter, which is the one I asked you about a moment ago, from the Parmelee Transportation Company asking for this $1.25 rate for the period retroactive to January 1, 1954?

A. It was.

Q. Did your subcommittee which had been appointed early in January, that is the subcommittee of the six principal lines, using the six principal stations in Chicago, where you represented the B&O, did that committee discuss with Mr. Parmelee, I mean Mr. Markin or his representatives of the transportation company, these ques-
828 tions that were presented by this letter of January, 1954?

A. I don't believe the subcommittee directly discussed this with Mr. Markin. It was possibly a discussion in the meeting of the Chicago Terminal Lines.

Q. All right. Do you recall the discussions in the meetings of the Chicago Terminal Lines?

A. Well, I don't recall anything specific at this late date, but I think the documents speak for themselves, and there would undoubtedly be discussions among the various members of the Chicago Terminal Lines attending that meeting.

Q. Well, the request was for a $1.25 rate. What discussions occurred between representatives of the lines, any

of them that you heard, and representatives of the Parmelee Transportation Company respecting that request for a $1.25 rate?

By Mr. Freeman: He has already answered that question, that he doesn't know and he can't recall.

By the Court: I think he has. He said he couldn't recall, that it undoubtedly was.

By Mr. Freeman: He doesn't know.

829 By the Court: That he doesn't remember.

By Mr. Thompson:

Q. Well, do you remember the discussions that went back and forth as to what the final settlement was, if any?

A. I believe at that time, if my memory serves me right, we said we would have to check into this further, because, of course, there was no carrier that was in the position or even willing to agree to a $1.25 rate.

830 By Mr. Freeman: I object and move it be stricken. It was prefaced by "I believe," and I think the jury is entitled to know the facts and not have speculation.

By the Court: I will sustain the objection.

By Mr. Thompson:

Q. What was said by somebody there that was in your presence respecting this request?

By Mr. Freeman: He has already said he doesn't know, Mr. Thompson. I don't think this line should be pursued, your Honor. May I object to any further questions?

By the Court: Yes, you may object, and I sustain the objection.

Was there a conversation had in your presence on this subject? That is what Judge Thompson is asking.

By the Witness: There was conversation, but the exact words, I couldn't say.

By the Court: Not the exact words, but in substance. Can you state where the conversation was had, who was

present, and what meeting it was, and give it in substance?

By the Witness: Well, at this meeting when this
831 proposal was presented I, myself, as well as other members of railroads attended this meeting and expressed ourselves that we were not satisfied with the fact that we could go into a $1.25 rate, and that we would have to look into the matter further.

By Mr. Thompson:

Q. Was any request made to have them fortified with book figures?

By Mr. Freeman: Your Honor, I think what counsel is trying to do is to lead the witness after the witness has said he doesn't recall. I assume there is a proper way of proving this, and I don't know what the proof is, but certainly it shouldn't be by leading questions from Mr. Thompson after this witness has said he doesn't know.

By the Court: He may answer.

By the Witness:

A. Undoubtedly, as I said—

By the Clerk: Not "undoubtedly." The objection would be sustained. It is what you remember and what was said about that subject.

By the Witness:

832 A. Well, we were not satisfied that we would go into a $1.25 rate without there being some additional information to substantiate it other than their statement that they required $1.25 a coupon to continue operations.

By Mr. Freeman: I move the answer be stricken.

By the Court: By "they," meaning the Parmelee representative?

By the Witness: Yes.

By Mr. Freeman: I move the answer be stricken.

By the Court: Overruled.

By the Witness:

A. (Continuing) As I recall at that time they stated they would get additional information for us and submit it at a later meeting.

By Mr. Thompson:

Q. Was such information submitted to the group later on?

A. At a later meeting?

Q. Later on.

A. I am quite sure there was. In fact, I am sure there was.

Q. Well, examining the document further, isn't it a fact that there was appended to these minutes the tabulations that were submitted by the Parmelee people
833 at this April 16th meeting, or the 15th meeting?

By Mr. Freeman: The document will speak for itself. We have no objection to this when it is offered at the proper time, the document itself. I don't see why this witness should—

By the Court: Read the question.

(Whereupon the record was read as above recorded.)

By the Court: He may answer if it is a fact.

By the Witness:

A. It is a fact.

By Mr. Thompson:

Q. Do you have any recollection of what arguments were made by the Parmelee people and what prophecies were made, if any, as to the point to which the charges might go in this transportation field?

834 By Mr. Freeman: I object to that. He has already testified he doesn't know. Everything from now on will be pure speculation from this witness.

By the Court: I am confining the witness only to con-

versation not speculation, no undoubtedlys. Do you recall any conversation about what was said by the Parmelee representative or by the railroads on that particular question?

By Mr. Freeman: Your Honor, wouldn't it be appropriate, if I may make the suggestion, if this witness is going to testify to conversations, that he state first who was present and who made the statement? Parmelee is a company, and I assume they had representatives there, and if he is willing to undertake to say who made the statement—

By the Court: If he gives the conversation, I will require him to state who was present, where it was and who said it.

By Mr. Thompson:

Q. All right; who was present at this April 15th 835 meeting representing the Parmelee Company?

A. Mr. Martin and Sy Passolt.

Q. Do you remember whether there were any others there or not?

A. From the Parmelee Company?

Q. Yes.

A. No; I don't recall. I don't recall whether Rhetigen was there or not.

Q. Do you recall whether Mr. Scheeder was there or not?

A. No, I don't recall.

Q. Who was there representing the railroads?

A. Well, there was one representative from each of the 21 carriers. Who they were by name, I wouldn't attempt to recall at this time.

Q. Do you recall who was there representing the Baltimore and Ohio Railroad or the Grand Central Station?

A. I represented the Baltimore and Ohio Railroad.

Q. Do you recall whether any others from that pas-

senger station of the lines that terminate there were present? Do you have any recollection of it individually?

A. No, sir.

836 Q. Can you tell us who was the spokesman for the Parmelee people?

A. Mr. Markin.

Q. What did he say about this request for increase and the railroads' opposition to it?

A. Well, to the best of my recollection he stated it was just that their business operation required them to have an additional increase in their coupon rate, and, as I recall, I think he submitted a scale of coupon rates by the thousands or ten thousands; I don't recall correctly now, as a part of his proposal.

Q. Are you referring to what is incorporated in this Defendants' Exhibit No. 5 as Schedule 3, which consists of two pages?

A. That is right.

Q. And in the course of discussing that schedule do you recall what Mr. Markin said about the amount of the coupon charge presently and prospectively, if you remember?

A. Well, on the basis of the schedule which he submitted—

By Mr. Freeman: I object. The question to you, Mr. Nelson, if I may say so, is what did Mr. Markin say.

837 By the Court: Yes. This would be a nice time to recess until 2:15, if you please.

By Mr. Freeman: Now you can think about it.

By the Court: Have a nice lunch and don't discuss it with anyone.

(Thereupon a recess was taken until 2:15 p.m., of the same day, Thursday, April 28, 1960.)

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

Office Supreme
FILE
OCT

No. 498

In the United States Court of Appeals

For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, Judge Presiding.

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VOLUME III

U.S.C.A. — 7th Circuit
JAN 13 1961
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838 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Thursday, April 28, 1960
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
Mr. John Paul Stevens
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

839 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

840 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(The following proceedings were had outside the presence and hearing of the jury:)

By Mr. Owens: Your Honor, before the jury is brought out, I have a motion I would like to make.

I understand that Mr. Albert A. Wilbur, real estate salesman for Baird and Warner, has been subpoenaed to appear here tomorrow morning. It is obviously with respect to Mr. Cross' purchase of a home in Deerfield.

By Mr. Thompson: A sale.

By Mr. Owens: Sale or purchase of a home in Deerfield, Illinois. It has no relevancy and materiality to these proceedings, and I am going to ask that Mr. Wilbur be excused from attendance at this hearing until we get to the point where we get beyond the issue of this public injury which the Court has established and that there be no offer of proof made as to what his testimony would be, because it has no relevance here.

By Mr. Freeman: It is completely relevant to the
841 issue of public injury as we see it. We are presenting this witness. We will identify him. We will ask the questions. He can make his objections, and then we will make our offer of proof.

By Mr. Owens: We are not making offers of proof as to how you see things. It is as to how the Court has circumscribed the scope of these examinations.

By Mr. Freeman: We have had this argument many times.

By the Court: Unless the defendants waive his personal appearance or qualification, I will permit him to appear and give his name and address.

By Mr. Thompson: That isn't the objection as far as the defendants I represent are concerned. The objection is that here is an offer of proof being made on a subject which is not before the Court.

If you had separated the issues in a personal injury case as to liability on the one hand and then damages on the other, you would have a clean demarcation of the two issues. That is a simple case.

If they undertook to make even an offer of proof on damages on the liability issue, you wouldn't even hear the offer of proof.

842 By the Court: If they will concede now that is the purpose, I will rule now.

By Mr. Freeman: That isn't the purpose.

By the Court: I can't anticipate.

By Mr. Freeman: We are expecting to put in proof on the public injury issue which we understand includes the conspiracy to violate Mr. Cross' public position. This is the difference that we have had, and all we are doing is making our record.

By Mr. Thompson: He says this has nothing to do—

By the Court: I will rule upon it when he starts in making the offer.

By Mr. Thompson: All right.

By Mr. McConnell: If the Court please, this morning Judge Thompson objected to the document which is marked for identification as Plaintiff's Exhibit No. 35, which the Court sustained.

In so far as the Court sustaining it on the ground that it was evidence of a conspiracy, this argument doesn't go to that at all. I am addressing myself to the question of hearsay, because it has been raised several times in these documents about hearsay, and we have had this same objection made before.

I stated this morning to your Honor that the Court 843 of Appeals in this Circuit was held that that sort of evidence is an exception to the hearsay rule.

I want to call your Honor's attention to the case of American Cooperative Serum Association against the

Anchor Serum Company, which is reported at 153 Fed. 2d., 907, and I am reading from page 912.

In that case witnesses for the plaintiff, who were employees of a corporation, were permitted to testify as to what outside parties not in the corporation told them about things, the same sort of hearsay involved here in this statement here where this man is making a report where he refers to something that somebody told him.

The Court said at page 912:

> "Defendants contend that the court erred in permitting plaintiff's witnesses to testify as to the reason given to the plaintiff by their druggist why the latter could not sell plaintiff's serum at 75 cents which resulted in plaintiff's reduction in price. They urged that such evidence is hearsay, self-serving and thus incompetent. This was not error. Such evidence is an exception to the hearsay rule and is well recognized."

844 They cite Lawler *v.* Lowe,—

By the Court: Is that an anti-trust case?

By Mr. McConnell: This is an anti-trust case, yes. The rules of evidence are no different in an anti-trust case.

By the Court: Yes, they are. I can see the admissibility of it in that case on the item that you have mentioned. It is part of the res gestae.

By Mr. McConnell: It comes in under the exception to the hearsay rule, not of res gestae, but of reports made in the ordinary course of business, which is what this fellow did. He made a report in the ordinary course of business. It was being gone into, the foundation laid on the witness stand, and then they cite a number of other cases, United States Supreme Court cases.

That is our Court of Appeals in the Seventh Circuit speaking there.

845 In United States *v.* General Motors Corporation, which also went up to this Court of Appeals—you

fellows carrying on your conversation over here, can you give us the courtesy of permitting me to address the Court?

By Mr. Meserow: I am sorry.

By Mr. Thompson: Sorry.

By Mr. McConnell: Quoting from the case of United States *v.* General Motors Corporation, 121 F. 2d 376, I am reading from Page 409. The Court said this:

> "The appellants objected to the evidentiary matters constituting Class V on such grounds as hearsay, irrelevancy and immateriality. Illustrative of this evidence is that in the form of certain exhibits which contain statements by GMAC field representatives to their superiors. They found this evidence particularly objectionable as hearsay since the field men making the reports were not called to identify them. Yet these reports were admissible under 28 U.S. Code Annotated, Section 695, 49 Statutes 1561 as recorded acts or transactions made in the regular course of
>
> 846 business."

Now, that particular statute isn't designed just for an anti-trust case. It is designed for any kind of a case, and our position is that this is a well recognized exception to the hearsay rule, where somebody, who is charged with the duty, makes a report to his superior of what he has heard or what he has seen, and so forth.

It may go to the weight of the evidence, as to how much your Honor is going to give weight to it, but as to its admissibility, it is not properly objected to under the hearsay rule.

By the Court: All right.

By Mr. Thompson: Mr. Tone will answer, if the Court wants any further information on it.

By the Court: On that subject? No. I sustain the objection.

Bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By the Court: I think you are still on the stand, Mr. Nelson.

By Mr. Freeman: We have subpoenaed Mr. Benjamin Goldstein, a fellow attorney.

847 By the Court: Yes. Will you step up, please, Mr. Goldstein?

By Mr. Freeman: We will only take a minute with him.

By the Court: Mr. Goldstein is merely to identify his signature, I understand.

By Mr. Freeman: Just one document, and that is it.

By the Court: He is leaving town, and I said I was perfectly willing to have him now.

BENJAMIN F. GOLDSTEIN, called as a witness by the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address.

A. Benjamin F. Goldstein; 190 East Pearson Street, Chicago, Illinois.

Q. Are you a practicing attorney at law?

A. Yes, sir.

By the Court: He has been. He is retired.

By Mr. Freeman: Yes, he is a fortunate person.

By the Witness: I am still active in the consulting

848 field.

By Mr. Freeman:

Q. Mr. Goldstein, in 1955, did you represent the Railroad Transfer Service, Inc., and Mr. John L. Keeshin?

A. Beginning with June 18, 1955, I became attorney for Railroad Transfer Service, Inc.

Q. And you represented them for the rest of that year?

A. Yes, sir.

By Mr. Freeman: I don't need to go beyond that. I would like to have marked for purposes of identification as Plaintiff's Exhibit 38 this two-page letter from Mr. Goldstein to the Mayor of the City of Chicago, dated September 24, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit 38, for identification.)

849 By Mr. Freeman:

Q. Mr. Goldstein, I show you the two-page document that has been marked as Plaintiff's Exhibit 38 for identification, and I ask whether the signature on that paper is your signature.

A. It is.

Q. Was this letter and communication to Mayor Richard J. Daley prepared by you?

A. It was.

Q. And was it transmitted to the Mayor on behalf of the Railroad Transfer Service, Inc.?

A. I transmitted this letter as attorney for Railroad Transfer Service, Inc., as indicated in the letter.

Q. And did you send copies of this letter to the Corporation Counsel of the City of Chicago and to the Chairman of the Committee on Local Transportation?

A. Page 2 of the letter shows that I sent a copy of this letter to Mr. John C. Melaniphy, Acting Corporation Counsel, City of Chicago, and Alderman Paul M. Sheridan, Chairman, Committee on Local Transportation of the City Council of the City of Chicago and I did send it.

By Mr. Freeman: I offer this letter in evidence as Plaintiff's Exhibit 38.

850 By the Court: Is there any further examination?

By Mr. Freeman: I want to get rid of him, yes.

By the Court: Do you have any more questions?

By Mr. Freeman: I have no questions after the letter is in.

By the Court: Do you want to cross examine him?

By Mr. Thompson: No.

By Mr. Freeman: Is the letter admitted? I would like to hear their objections before he leaves.

By the Court: All right.

By Mr. Thompson: If the Court please, I object to this offer as being utterly irrelevant to any issue in this case, much less the limited one we are dealing with, as being written by the attorney for this transfer company after the contract was awarded.

By the Court: Let me see it.

By Mr. Thompson: It couldn't possibly have anything to do with the business at hand.

851 By Mr. Freeman: Your Honor, it is exactly in point on even the very, very narrow issue that you have presented us with.

By Mr. Thompson: Public injury?

By Mr. Meserow: May I see the original?

By Mr. Freeman: Your Honor, if you will start at the bottom of page 1, paragraph 3—

By the Court: Let me read it, please.

All right, Mr. Freeman?

By Mr. Freeman: Well, this is a letter written by a representative of one of the defendants. It is an admission against interest with respect to the scope of the service. You have indicated that one of the issues that you want evidence on is the differences in the service proposed by Keeshin as against that rendered by Par-

melee, and this deals with that very issue, and therefore it is precisely relevant, and of course completely competent.

By the Court: It pertains to a contract already executed.

By Mr. Freeman: It pertains to proposed service by Keeshin as against the service rendered by Parmelee
852 during that very time. We were rendering service on September 24 up to October—

By the Court: Objection will be sustained.

By Mr. Freeman: Excuse me?

By the Court: Objection will be sustained.

By Mr. Freeman: You mean I cannot present this to the jury?

By the Court: No, you can't. It applies to a contract executed and in force.

By Mr. Freeman: With whom?

853 By the Court: Between Keeshin and the railroads.

By Mr. Freeman: That is what we are talking about here. The contract that Keeshin proposed to the railroads, and this describes that Keeshin proposal.

By the Court: Was it already executed?

By Mr. Freeman: It was executed on September 15, but it nevertheless describes that very contract and indicates what the circumstances are of the service that is proposed.

By Mr. Meserow: The contract would be the best evidence, your Honor. This is merely an opinion of a lawyer.

By Mr. Keating: A conclusion of the writer.

By the Court: Objection will be sustained.

By Mr. Keating: Thank you.

By Mr. Freeman: Mr. Goldstein, will you stay on the stand, please.

By Mr. Freeman:

Q. Mr. Goldstein, at the time did you have a
854 knowledge of the relative service that was to be performed by the Railroad Transfer Service, Inc., as compared to the service then being performed by Parmelee Transportation Company for the transfer of passengers?

By Mr. Meserow: I object to the question, if the Court please. He is asking for privileged information between a lawyer and a client.

By Mr. Freeman: It isn't privileged. It is public information. I am not asking for any communication between him and his client. This is not privileged.

By Mr. Meserow: You are asking for facts which he learned from his relationship of lawyer and client.

By the Court: I will let him answer.

By the Witness:

A. Would you please clarify your question? Do I understand your question to be did I know the contracted service of the two—

By Mr. Freeman:

Q. Yes.

A. Or did I know the implementation of the con-
855 tract? Which is it you are asking?

Q. I am asking you whether you know the service that was proposed by Keeshin commencing October 1, 1955, as compared to the service rendered by Parmelee up to October 1, 1955?

856 A. This letter refers to the executed contract—

Q. Would you answer my question, Mr. Goldstein?

A. Not proposed to be. It was the service which was indicated in the contract already executed versus the contractual service in which Parmelee had agreed to perform the services which were then in existence.

Q. Is it true that under the Keeshin arrangement—

A. You mean the Railroad Transfer?

Q. Under the Railroad Transfer Service, Inc. arrangement, the passenger could not use his transfer coupon to take the Railroad Transfer Service, Inc. vehicles to the Loop hotels or business destinations?

By Mr. Meserow: I object to the question, your Honor.

By The Court: The objection will be sustained.

By Mr. Freeman:

Q. Was there a wide cleavage in the services to be rendered by the Railroad Transfer Service, Inc. as against the Parmelee service then being rendered?

By Mr. Meserow: Objection to the question as calling for a conclusion.

By The Court: Objection sustained.

By Mr. Freeman:

Q. Was the railroad service limited in substantial
857 respects with respect to the railroad passengers that had available to them these transfer coupons?

By Mr. Keating: Same objection, as a conclusion.

By The Court: The same ruling.

By Mr. Freeman: That is crazy.

By Mr. Meserow: I object to the comments of counsel in the hearing of the jury.

By Mr. Thompson: He made a comment which was intended for the jury's attention, but, of course, the jury is too intelligent to pay any attention to it.

By Mr. McConnell: We can confer here amongst ourselves. If you don't like it, that is too bad. We have a right to confer. We are not talking to the jury. We have not said anything to the jury. We are talking between ourselves.

Offer the document, and that is all you can do.

By Mr. Freeman:

Q. Mr. Goldstein, did you negotiate or participate in the negotiations of the arrangements entered into by
858 the railroads with the Railroad Transfer Service, Inc.?

By Mr. Meserow: I object to the question on the grounds of privilege.

By The Court: He may answer.

By The Witness:

A. Beginning with the date I was retained to act as counsel for Railroad Transfer, Inc. I performed all of the services which, as counsel for that company, in my opinion were necessary or desirable to be performed for the interests of my client in trying to consummate the transaction between the client and the railroads.

By Mr. Freeman:

Q. In that connection did you have available to you a detailed summary of all of the services rendered by the Parmelee Transportation Company?

A. On June the 18th?

Q. No, during the time of your negotiations and prior to September 15.

A. I had the contractual arrangements available to me, yes.

Q. You had contractual arrangements?

A. The documents indicating the character of the service that Parmelee was to perform. Of course, I had those available, the documents.

859 Q. Were these prepared for you in memorandum form?

A. I don't have the slightest notion whether they were prepared, whether they are matters of public record or the ordinance. There were various sources. I came here on a subpoena to discuss—to identify this letter. I have not checked the other record, but they are matters of public

record. There was a franchise that they operated under.

Q. At the time you wrote this letter, Mr. Goldstein, did you realize it was a correct and truthful statement of the facts?

By Mr. Meserow: I object to the question.

By The Court: Objection sustained.

860 By Mr. Freeman:

Q. Did you seek to misrepresent to the Mayor when you wrote that letter?

By Mr. Meserow: I object, your Honor.

By The Court: Objection sustained.

By Mr. Freeman: I will make an offer of proof on that letter. Thank you, Mr. Goldstein.

(Witness excused.)

By Mr. Freeman: I wish the jury could be excused while I make the offer.

By Mr. Thompson: You can make it some other time.

By Mr. Freeman: Thank you, Mr. Thompson, but I would like to offer it now. Would you like me to delay my offer until later?

By The Court: If you please, until Nelson is through. When I excuse the jury you can discuss it with me.

By Mr. Freeman: All right.

By Mr. Thompson: Are you through for the moment?

By The Court: Call Mr. Nelson to the stand.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, having been previously duly sworn, resumed the stand and testified further as follows:

861 *Cross Examination (continued) by Mr. Thompson.*

Q. By the way, Mr. Nelson, you said you thought that Mr. Passolt was at this meeting in April of 1954.

The fact of the matter is he had died a few months before that, hadn't he?

By Mr. McConnell: I think the witness ought to be allowed to testify to something here. Thompson stands here and tells him—puts words in his mouth.

By Mr. Meserow: He is getting your bad habits.

By Mr. McConnell: I had not led any witness except on cross examination where I had a right to.

By Mr. Thompson: We are cross-examining this witness. They put him on the stand pretending that he was an adverse witness as far as the Baltimore and Ohio Railroad is concerned, but so far as all the other defendants I represent—

By The Court: I will let him answer.

By Mr. Thompson: —his cross examination is proper.

862 By The Witness:

A. I thought he was alive at that time. I think I mentioned also Mr. Markin and Mr. Rheingten were there. Mr. Passolt, if he had passed away, quite naturally wasn't there at that meeting.

By Mr. Thompson:

Q. You don't remember when he had passed away?

A. No.

Q. He had attended meetings previously?

A. Representing the Parmelee Company, yes, sir.

Q. In April, 1954, when you were discussing these dealings with the representatives of Parmelee Transportation Company, which certainly included Mr. Markin, and you say he was the spokesman, did he say to the railroad representatives that he required a coupon of $1.32 to $1.35 to break even?

By Mr. Freeman: I object. I don't like to keep objecting, but this witness had previously said he didn't know

anything about it. Now, he has had a recess and Mr. Thompson leads him into what the discussion was. I don't think this is very proper procedure.

By The Court: Are you talking about the same
863 conference?

By Mr. Freeman: The same meeting in which he said he knew nothing, that he couldn't recall anything.

By The Court: Proceed.

By Mr. Thompson:

Q. Do you recall?

A. Are there any minutes of that meeting where I can refresh myself?

A. I certainly can't recall offhand. Quite a few years have transpired.

864 By The Court: Have you exhausted your memory now as to what was said at that meeting?

By The Witness: Yes.

By The Court: You may refresh his recollection if you wish.

By Mr. Thompson: Mark this document as Defendants' Exhibit No. 6, for identification.

(Thereupon said document was marked Defendants' Exhibit No. 6 for identification.)

By Mr. Freeman: Your Honor, I object to this memo being submitted to the witness. It is a memo prepared by the Santa Fe from Mr. Anderson to Mr. Duffy, and it certainly is not within this witness' organization.

By The Court: In my understanding of the law for refreshing one's recollection, it may be from anything, a telephone book if it will refresh his recollection.

By Mr. Thompson: There is no question pending, and I have not asked the witness anything about the document.

By The Court: He is addressing himself to the
865 property of—

By Mr. Freeman: Of identifying this document and handing it to the witness to refresh his recollection. I don't think this memo was prepared in this witness' organization, and Mr. Thompson has been seeking to segment these railroads, and he is using another memorandum for this purpose.

By The Court: Overruled.

By Mr. Thompson:

Q. Mr. Nelson, I hand you a document which has been marked for identification as Defendants' Exhibit No. 6, and I direct your attention to the second paragraph of that document, and I inquire whether or not that document refreshes your recollection as to what was said on the subject for discussion at this April, 1954 meeting with Mr. Markin.

By Mr. Freeman: I have a further objection, your Honor. I object to this entire line of examination. It has nothing to do with the current negotiations that occurred in 1955. This has to do with 1954, and it is not relevant or material to the issues that are before this
Court with respect to the contract that was negotiated
866 with Keeshin.

By The Court: If it serves to refresh his recollection, it is proper.

By Mr. Freeman: You say it is proper?

By The Court: If it serves to refresh his recollection for any subject he may be inquired on under the rules of evidence.

By Mr. Freeman: Let me mention a few objections to this line of examination so that you may rule upon them.

No. 1, this examination is not relevant to anything I inquired of this witness, and it is rather fundamental in

our jurisprudence that the cross examination or redirect examination should be germane to whatever is inquired about of the witness.

It is not relvant and not germane.

By The Court: That is correct.

By Mr. Freeman: Secondly, it is not material or relevant to the issues that you yourself have staked out in this case, the public injury that results from selecting Keeshin rather than Parmelee. We say that public injury is broader so that it includes conspiracy which resulted
867 in an arbitrary decision for Keeshin.

If Judge Thompson is proceeding to determine motivations and all of them, but otherwise, this examination Honor must give us the opportunity to go into those motivations and all of them, but otherwise, this examination is completely irrelevant.

By The Court: I don't know what it is. I have not heard any questions.

By Mr. Freeman: It has to do with 1954. You have been listening to it for an hour, your Honor. All of this examination of Mr. Nelson up until now has to do with previous negotiations. This negotiation, for example, terminated in April, 1954, before there was Keeshin anywhere in the picture.

By The Court: Again I would like to remind you that your direct examination has covered a period of years including the '40's.

By Mr. Freeman: It did not, your Honor. I asked him how long he was with the railroad.

By The Court: I recall three or four meetings in
868 different times and different conversations.

By Mr. Freeman: Yes, and every meeting that you recall, and the reporter will so advise us, starts with January, 1955. I did not proceed with any examination of witness prior to 1955.

869 By Mr. Meserow: You talked about his bid in 1954.

By Mr. Freeman: He put a bid in in December of 1954, and this is April of 1954, and all of this conversation is of April, 1954. It has no relevancy to my examination. If Mr. Thompson wants to put in his case, he can put it in when his time comes.

By Mr. Keating: Your Honor, the committee was appointed in January of 1954, and they proceeded for 18 months to the middle of 1955, and this is the area of negotiations.

By The Court: As I recall the evidence, the question of the acceptability and satisfaction of the service of Parmelee was all admitted into evidence, both good and bad, by previous witnesses.

By Mr. Freeman: There was no bad.

By Mr. Keating: I object to the evaluation by Mr. Freeman.

By The Court: This man testified he had complaints. I don't know what the next question is, but the ob-
870 jection is overruled.

By Mr. McConnell: I object to the Court's statement of the evidence, and I move to strike it out of the record.

By Mr. Keating: I move to strike Mr. Freeman's statement as to the evidence.

By Mr. Thompson: I should think counsel would be courteous enough to keep still until the Court finishes his ruling.

By The Court: Objection overruled. Proceed with your question, and I will hear what it is.

By Mr. McConnell: I move Mr. Thompson's statement be stricken from the record.

By The Court: I wish counsel would not make resent-

ful remarks to each other, both sides. When the Court makes a ruling, it is for the record, and I don't mind if you take exceptions to them, but I don't approve of resentful mumblings to each other so the jury can hear. Proceed.

By Mr. Freeman: What is the question, Mr. Thompson?

By Mr. Thompson:

Q. Does the witness know?

871 A. No, I am afraid I don't.

By The Court: All he said was read Paragraph so-and-so, and does it refresh your recollection? That is all I remember.

By Mr. Thompson: That is right.

By Mr. Thompson:

Q. I inquired whether the pragarph of which I have directed your attention in this document, Defendants' Exhibit No. 6 for identification, refreshes your recollection that at this—

By Mr. Freeman: Refreshes his recollection; isn't that the first question, Mr. Thompson?

By Mr. Thompson:

Q. (Continuing) —refreshes your recollection as to whether at this April, 1954 meeting Mr. Markin advised the terminal lines that he would have to have between $1.32 and $1.35 per coupon to break even?

By Mr. Freeman: Your Honor, the document is not in evidence. The question should be, does it refresh his recollection?

By The Court: Strike the question. I will ask

872 counsel to reframe it. It is leading and suggestive, and if it refreshes his recollection, he may testify what he recalls.

By Mr. Thompson: I admit it is leading, your Honor.

By The Court: I beg your pardon?

By Mr. Thompson: I admit it is leading, and I take the position that this is cross examination.

By The Court: I think the witness is an experienced witness, and he knows—he was at the meetings, and he can testify.

By Mr. Thompson: I accept the Court's limitation.

873 By Mr. Thompson:

Q. Does this paragraph in this memorandum refresh your recollection as to anything that was said at that meeting?

A. It does.

Q. What is your recollection with respect to what Mr. Markin said as to the required coupon rate he needed to break even?

A. Well, Mr. Markin made the statement that his company had suffered losses during the first three months in the amount of $142,000, as I recall, and therefore in order to partially recoup some of that money, he would need a Parmelee rate going as high as $1.35.

Of course, that was not acceptable, and a counter-proposal was offered to Parmelee company of $1.20 effective on April 1, 1954.

This, in turn, was not acceptable to Mr. Markin, and the rails then reconsidered and offered him seven and a half cents a coupon retroactive to January 1, 1954 to the 1st of April of that year, after which they would then raise the rate to $1.20 plus one cent for each three cents

of his wage increase in his negotiations with the union

874 which would be effective with his new contract if and when it was settled on July 1, 1954.

875 Q. Very well.

A. And that negotiation in contract was settled some time in September of that year, and it amounted to two cents a coupon, which we paid to Parmelee retro-

active to July 1st, 1954, and I think it was on October 1st or September — October 1st, that we started paying them $1.22 a coupon.

Q. Retroactive back to July 1st?

A. Yes. We paid in the two cents from the September to July 1st period.

Q. All right. Now I inquire as a matter of refreshing your recollection, do you recall whether Mr. Markin said anything about furnishing his book accounts of costs and operation to back up his request for $1.25 per coupon?

A. He refused in that instance, and had in every previous instance that we had requested a net gain or loss statement from him concerning the direct Parmelee transfer operation. We had never been successful in that direction.

Q. Did he make any statement as to how much he would require as a percentage of profit on his investment to continue in the business?

A. Well, he made a statement at one meeting that 876 if he couldn't make at least ten percent on his money, why, he would go out of business.

Q. We have already covered, I think, this September meeting at which you interviewed a number of people. Now when the Keeshin proposal came in, December 15, proposing $1.20 a coupon, you were then paying Markin $1.22 per coupon?

A. That is correct.

Q. And previously in January of 1954, ahead of Keeshin's proposal, Markin had demanded $1.25 and had —

By Mr. Freeman: I object to the characterization demanded. A request was put in and there was negotiation.

By the Court: I think that is sound.

By Mr. Thompson:

Q. (Continuing) — had requested $1.25 a few months before?

A. That is right.

Q. Now, who pays the coupons that are used in this local transportation service?

A. The receiving rail carrier pays it. It is not paid by the passenger at all or included as any—

877 By the Court: I think you ought to explain what you mean by rail carrier. I don't understand it, and I don't think the jury does.

By Mr. Thompson: Receiving carrier, he said.

By the Witness: The outbound carrier, whatever railroad was used on the outbound trip would be the receiving carrier.

By the Court: The railroad company?

By the Witness: Yes.

By Mr. Thompson:

Q. And you were saying something more?

A. It is not included in the cost of the ticket. It is service that is furnished free of charge by the railroads.

By Mr. Freeman: I move that that be stricken. That is a conclusion of the witness, your Honor. The jury should determine whether or not the public pays for the service.

By the Court: Objection overruled.

By Mr. Thompson:

Q. Well, Mr. Nelson, to be specific about it, if one goes into the B&O Station down here and buys a

878 ticket from Washington, D. C., to Denver, Colorado, the coupon is in the through ticket, is it?

A. There is a coupon in the through ticket, and it is in there at no charge whatsoever to the passenger.

By Mr. Freeman: I move to—

By Mr. Thompson:

Q. The ticket would cost identically—

By Mr. Freeman: I move to strike the last part of the answer.

By the Court: The last part may be stricken. It wasn't responsive to the question.

By Mr. Thompson:

Q. Mr. Nelson, if the ticket were sold without the coupon in it, if one didn't want it, would he get any reduction in the price of his through ticket?

A. No.

Q. How many coupons, on the average, does the B&O Railroad pick up every day?

A. Well, we have, I would say, fifty thousand to fifty-seven thousand a year, so whatever that is, broken down to a daily percent.

Q. Then the average would be one three hundred
879 and sixty-fifth of what number, did you say?

A. Fifty thousand to fifty-seven thousand a year.

Q. Fifty to fifty-seven thousand a year?

By Mr. Meserow: Seventy thousand.

By Mr. McConnell: I move to strike out the testimony of counsel on the other side.

By Mr. Thompson: I think that would help.

By the Court: Proceed.

By Mr. Thompson:

Q. All right, what is the answer?

A. It runs from fifty thousand to fifty-seven thousand a year on the B&O.

880 Q. All right.

Now the B&O, I think it was brought out yesterday by Mr. Freeman, is one of the railroads that has one of the lower percentages of the coupons that it picks up here in this transfer service?

By the Court: 4.37, was it?

By the Witness: 4.37.

By Mr. Thompson:

Q. 4.37 of the total coupons picked up here in Chicago is picked up by the B&O, is that right?

A. That is right. At least, at the time that statement was made up.

Q. Well, sure, that was five years ago.

A. Five years ago.

Q. Do you think it is relatively about the same or do you have any experience?

By Mr. Freeman: What difference does that make, your Honor? I mean, aren't we interested in what happened in 1955? Isn't that the purpose of this inquiry and lawsuit?

By the Court: I can't presume what Judge Thompson has in mind. Make your objection to the question.

881 By Mr. Freeman: All I can do is make my objection that it is immaterial.

By Mr. Thompson: Good.

By the Court: That is right. I presume your point is to show the percentage, Judge Thompson?

By Mr. Thompson: Oh, my point is just whether or not there has been any — and it is not very much of a point, I will admit — whether there has been any great shift in the relative proportion of the tickets the different receiving railroads pick up.

By the Court: He may answer.

By the Witness:

A. Our percentage is at least 5 per cent. Possibly it has increased one or two per cent more.

By Mr. Thompson:

Q. Now is there a difference in the competitive position of the railroads in this community as to which or whether some need it more than others?

A. Quite naturally with the number of stations you have and the number of what we call "feeder lines" into stations. That would affect our station particularly because our only feeder line is the Soo Line and the

882 Pere Marquette Railroad, whereas the Union Station,

for instance, has the GM&O, the Burlington and the Milwaukee railroads, which are feeder lines in their business from the west to the east.

Q. Plus the Pennsylvania? You didn't mention that.

A. Well, the Pennsylvania is our competitor. I am talking about feeder lines.

Q. Oh, you are talking about ones that feed into—

A. The lines that feed the traffic from the west and the south to the east.

Q. I assume, then, the Pennsylvania is one of the lines competing with the B&O?

A. That is our direct competitor in business to Washington and other eastern points.

Q. And if a passenger comes into Chicago on the Pennsylvania and is going out on the Burlington, he just gets off the train at the Union Station and gets onto the Burlington?

A. That is right.

Q. Whereas if he comes in on the B&O then he has to be transported over to the Union Station to get the Burlington?

A. That is right.

By Mr. Thompson: That is all I have.

883 By the Court: Does any other defendant wish to ask questions?

By Mr. Meserow: I would like to ask Mr. Nelson a few questions.

Cross Examination by Mr. Meserow.

Q. Mr. Nelson, have you had occasion to see the Parmelee equipment that was used at the stations in the transfer operation? That is the Parmelee equipment.

A. When it was in operation?

Q. When it was in operation.

A. Yes, sir.

Q. Did you ever ride in any of their cars?

A. I did.

Q. Could you briefly describe what they were, these Parmelee cars?

A. I believe at that time they were seven-passenger vehicles.

By the Court: What was the question?

By Mr. Meserow: I asked what they looked like.

By the Witness:

A. I think it was a seven-passenger vehicle with
884 space in the rear for baggage.

By Mr. Meserow:

Q. Now being a seven-passenger vehicle, that is aside from the driver?

A. Yes, that would be, as I recall.

Q. Didn't they have two, what they call, jump seats in the back, little round seats?

By Mr. Freeman: When?

By the Court: I think counsel is entitled to know when, what year.

By Mr. Meserow:

Q. Prior to October 1st, 1955.

By Mr. McConnell: They were in business 102 years.

By Mr. Meserow: They had some from 102 years ago.

By Mr. McConnell: No, they didn't, and I object to your testimony.

By the Court: I am not going to permit reducing this to a show. Now let's try a lawsuit. They have a right to have you limit it to the last two or three years.

885 By Mr. Meserow:

Q. Will you describe the Parmelee vehicles for the years 1953 to 1955, October 1st. Now, you said they were seven-passenger. They had three seats in the back, correct?

A. Three.

Q. In the rear seat?

A. Three in the rear seat, and then two intermediate seats.

Q. That is the jump seats?

A. Or jump seats, and then the front seat with the driver. There were two entrances.

Q. In other words, two would have to sit with the driver, is that correct?

A. To make it seven, yes.

Q. Who manufactured these vehicles, do you know?

A. Well, I have heard mentioned who manufactures them, but I don't know for sure.

By the Court: You can't testify to what you heard. If he knows.

By Mr. Meserow:

Q. Do you know?

A. No, I don't know for sure.

Q. Now what color were these vehicles?

886 By Mr. Freeman: I don't think that makes any difference, does it, your Honor?

By the Court: I don't either. If you are talking about comfort, that is one thing. If you are talking about color, it is a matter of personal taste.

By Mr. Meserow:

Q. All right. Did you ever ride in these vehicles?

A. I have ridden in them.

Q. Were they comfortable?

A. Not particularly.

Q. Were they clean?

A. Yes, I would say they were clean.

Q. Now have you any ideas as to the average age of these vehicles that were used by Parmelee in the years, let's say, 1954 and 1955, prior to October 1st, 1955?

By Mr. Freeman: I object to that. It isn't necessary to imagine that. We will put in the years. I mean, we

will put that evidence in, I assure Mr. Meserow of that, so the jury will know the actual facts of when that equipment was put into service.

By the Court: He may answer.

887 By Mr. Freeman: But he is asking him to imagine it.

By Mr. Meserow: I didn't say imagine. I asked him if he knows.

By Mr. Freeman: If he knows what year? All right.

By the Witness:

A. No, I don't.

By Mr. Meserow:

Q. Well, isn't it true, Mr. Nelson, that some of these cars that were used by Parmelee in 1954 and 1955 were as much as five or six years old?

By Mr. Freeman: I object to that. He said he didn't know, and this is a false statement of counsel.

By the Court: That is correct. It may be stricken.

By Mr. Meserow:

Q. Did Parmelee enjoy any stewardesses, uniformed stewardesses, as Railroad Transfer does at the present time at the stations?

A. No, they did not.

888 By Mr. McConnell: I object to his testimony about what Railroad Transfer does at the present time. I move to strike it out.

By the Court: That part may be stricken.

By Mr. Meserow:

Q. Did Parmelee employ any stewardesses at the stations to take care of the problems of passengers coming and going?

A. They did not.

Q. Does Railroad Transfer employ uniformed stewardesses at the present time, since October 1st, 1955, to

take care of the passengers coming in and going out of the stations?

A. They do.

Q. Now, Mr. Nelson, there was introduced, I think, as Parmelee Exhibit No. 35, something about 400 servicemen being transferred from one stataion to another. Were you in your present capacity with the B&O Railroad, or were you with the B&O Railroad during the years of 1946 and '47, during World War II, and a year after?

A. I was.

Q. Isn't it true, Mr. Nelson, that when Parmelee was operating this service, and a big group of servicemen came in and had to be transferred from one station 889 to another, that Parmelee had them marched over from one station to another and didn't take them over on their vehicles?

By Mr. Freeman: That is so objectionable, your Honor.

By the Court: Sustained.

By Mr. Freeman: It is repugnant to all sense of decency.

By the Court: It may be stricken.

By Mr. Meserow: That is all.

By Mr. Keating: I have a couple of questions.

Cross Examination by Mr. Keating.

Q. Mr. Nelson, were you stationed in Chicago in 1950?

A. I was.

Q. Do you recall the interruption of Parmelee's service at about that time?

A. That is right. There was a strike.

Q. Can you tell us approximately how long that interruption was?

By the Court: What year was that?

By Mr. Keating: 1950.

By Mr. Freeman: He already testified to it. It
890 was May to December, 1950.

By Mr. Keating:

Q. Do you know where the LaSalle Street Station is?

A. I do.

Q. That is where the New York Central operates?

A. That is right.

Q. How far is that from the B&O Station?

A. Two and a half blocks.

Q. Now when the service was interrupted at your terminal, do you know as a fact whether the service was interrupted at the LaSalle Street Station?

By Mr. Freeman: As a fact?

By Mr. Keating: Mr. Freeman seems to have some objection—

By Mr. Freeman: I don't know why you put it. I will concede there was a strike affecting all the stations.

By the Witness: I was going to say it affected all the stations, not just our station.

891 By Mr. Keating:

Q. All right.

Mr. Nelson, do you recall whether a provision was made at that time for the railroads to redeem the Parmelee coupons direct to the railroad customers?

A. That we did.

Q. That was done by the railroads at that time in the way of a redemption or a refund?

A. We picked up the coupons and offered the passengers cash.

Q. How much cash?

A. 60 cents for each coupon.

Q. And that was for taxi cab service, was it?

A. That is right.

Q. And those were Mr. Markin's cabs, do you know?

A. Well,—

By Mr. Freeman: I object to that.

By the Court: Sustained.

By Mr. Freeman: What is this "Mr. Markin's cabs"?

By Mr. Keating:

Q. Do you know if Mr. Markin has any interest in the Yellow and Checker cabs?

892 By Mr. Freeman: I am objecting to that also.

By the Court: Read the last question.

(Whereupon the question was read as above recorded.)

By the Court: I think we have it before the jury. If he knows of his own knowledge.

By Mr. Keating:

Q. Specifically let me ask this: Do you know whether the plaintiff, Parmelee Transportation Company, had any interest at that time in Yellow and Checker cab companies?

A. They did.

By Mr. Keating: Thank you.

That is all I have.

By Mr. Freeman: Just one question on this last point.

Redirect Examination by Mr. Freeman.

Q. Are you saying that the Parmelee Transportation Company had an interest in the Checker Taxi Cab Company in Chicago?

A. I had been informed by one of your people at one time or another that that was part of their operation.

893 Q. No. Does the Parmelee Transportation Company have any interest, stark interest or direct or indirect interest in the Checker Taxi Cab Company in Chicago that you know of?

A. I can't say that positively.

Q. As a matter of fact, isn't it true that they have no interest in Checker Taxi Cab Company?

A. I can't say that positively.

Q. You were asked by Mr. Keating about this 60 cents that you gave the passengers. Now that took care of the passenger movement between stations, but then wasn't it also necessary to take care of baggage?

A. That is right.

Q. And the railroads handled that baggage at considerable cost, did they not?

A. We handled that baggage.

Q. At considerable cost, Mr. Nelson?

A. Well, we were only paying 60 cents for the transfer of a passenger, so we were saving the difference between that and what the Parmelee rate was, so the ultimate may not have been additional cost.

Q. What was the Parmelee rate in 1950? 85 cents?

A. No, $1.00 or $1.05. It was $1.00.

Q. Was it a dollar?

894 A. A dollar in 1950.

Q. Did it cost you more than 40 cents per passenger to bring baggage across?

A. I never checked into those figures, sir.

Q. You never prepared any memoranda to that effect?

A. No, sir, I never checked into the figures of what it cost.

Q. Did you prepare a memorandum?

A. No.

Q. All right.

Now you have indicated also that Railroad Transfer Service had stewardesses to help passengers, and Parmelee didn't have stewardesses?

A. That is right.

Q. But did Parmelee have passenger agents at each station?

A. They did.

Q. Did Parmelee have baggage agents at each station?

A. They did, same as Railroad Transfer has the same thing in addition to stewardesses.

Q. Do you know how many employees Railroad Transfer has?

A. No, sir.

Q. Did you know how many employees Parmelee had?

895 A. They gave us a figure once, but I wouldn't know what they are now.

Q. Well, wasn't it true that Parmelee had in 1955 possibly three times as many employees as Railroad Transfer has now?

A. I wouldn't have any idea.

Q. Mr. Nelson, we spoke of the equipment that Parmelee had in service in 1955, and you were asked about comfort. Let me just ask you about two items, two elements in that equipment as compared to the station wagons used by Keeshin.

Was there more head room so that the passenger could get in and out of the Parmelee vehicles easier, more head room than in the station wagons?

A. I wouldn't attempt to say.

Q. Did you try to get in and out of the station wagons?

A. That I did.

Q. Did you have any difficulty getting into them?

A. As far as I am personally concerned, I have difficulty getting in and out of any vehicle because of my height, so I couldn't honestly answer you one way or the other.

896 Q. Then are you conscious of the amount of head room that there is in a vehicle that you get in and out of?

A. Yes.

Q. Didn't you find that you had more head room in the Parmelee limousines and vehicles?

A. I do not recall. I do not.

Q. All right. Secondly, the station wagons, as they were operated, provided for the baggage to just be loaded in the back of those station wagons, is that right?

A. I believe that there was a partition back there.

Q. Was there a partition?

A. I am sure there was.

Q. But with the Parmelee vehicles, were they specially built so that the baggage compartment was separated from the passenger compartment?

A. It was.

Q. And when the baggage was loaded, the passengers were not exposed to the elements, were they, in the Parmelee operation?

A. They are not exposed to the elements now. In our stations the loading is done, so the baggage and passengers—

897 Q. If a station wagon's rear door is opened to put baggage in, does the air from the station hit the passengers?

A. It does.

Q. Whatever air it is.

A. That is right.

Q. Those are the elements I was thinking of—

By Mr. Meserow: Hot air is what is getting in now.

By Mr. McConnell: I move to strike that.

By the Court: Counsel has got to refrain from such comments. It doesn't register with me or with the jury. I tell the jury to disregard everything they hear or they see except what is being ruled by me on the witness stand.

By Mr. Freeman: I would like to tell your Honor that Mr. Meserow makes no impression on me either.

By the Court: That may be stricken also.

By Mr. Freeman:

Q. Mr. Nelson, you stated here that the public in no instance pays for the transfer coupon?

A. Not in no instance. There is a small perimeter
898 around the City of Chicago where the fare is charged.

Q. You want to change your testimony?

A. Where the fare is charged, it is part of the tariffs.

Q. I know it is part of the tariff. I am thinking of your testimony, Mr. Nelson, now. What is your testimony?

A. He spoke of a passenger going from Washington to Denver.

Q. I want to speak of a short-haul passenger who originates within a hundred miles of Chicago and wants to go through Chicago to Los Angeles. Would he personally have to pay the transfer charge if he wanted to use this transfer service?

A. He would.

Q. And your tariffs specifically provide, do they not, that all passengers who either originate or who are destined to these perimeter points, stated as $2.98 as the cost of a first-class ticket, those passengers must pay this transfer charge if they want to use the transfer service?

A. That is right.

Q. And they pay it personally?

A. That is right.

899 Q. Don't you regard the railroads as part of the public? When the railroads pay for this cost—

By Mr. Meserow: Objection to that question; calling for a conclusion.

By the Court: Objection sustained.

By Mr. Freeman: He has used the expression public. I objected to him using it because I felt the jury should have the prerogative to determine what is the public.

But since he has used it, I want to know from him whether he regards the railroads who are paying most of the cost of this transfer as part of the public?

By the Court: Objection sustained.

By Mr. Freeman:

Q. Are the railroads owned by stockholders, Mr. Nelson?

A. They are.

Q. Are these transfer costs part of the cost of operation of the railroads?

A. They become part of the cost.

Q. Didn't you write a memorandum that I read to you dealing with the question of passenger costs imping-
900 ing upon our freight rates ultimately? You did not?

By Mr. Meserow: Answer the question.

By the Witness:

A. No, sir.

By Mr. Freeman:

Q. You were asked whether or not Mr. Markin asked at one meeting or another, asked for a return of ten percent, do you remember that?

A. Yes, he made that.

Q. Wasn't it true that Mr. Keeshin in his negotiations with your committee said that he wanted a ten-percent return?

A. Not that I recall.

Q. You don't recall that?

A. No, sir.

By Mr. Freeman: I will come back to that in a minute.

By Mr. Freeman:

Q. Mr. Nelson, are there other elements of cost in this transfer service that the passenger directly pays for?

A. Well, there are other phases of transfer in the City of Chicago.

Q. That the passenger directly pays for and with
901 which you contracted with Mr. Keeshin?

A. Your train-to-train transfer of hand baggage in Chicago.

Q. I am thinking of the movement of baggage between stations which hasn't been checked through in advance. Does the passenger make a payment for that movement of baggage?

A. Well, a passenger wouldn't very likely not check his baggage from point of origin to destination. He wouldn't check it to Chicago and then have it transferred over to the station he is departing from. He checks it through.

902 Q. I am asking you, is there a service, Mr. Nelson, provided for the transfer agent that where a passenger comes to Chicago, either accompanied by his baggage or checks his baggage to Chicago, and then decides to have that baggage transferred over to another station, that the transfer agent will transfer his baggage over and make a charge for it?

A. Yes, there is such an arrangement.

Q. And wasn't the Keeshin charge for that service higher than the Parmelee charge?

A. No, it is the same.

Q. Do you know that?

A. Yes.

Q. What was the Parmelee charge for that service?

A. 25 cents—no.

Q. No. Wasn't it true that Parmelee transported any number of pieces of baggage of any passenger who had a transfer coupon for the transfer coupon without any charge whether it had been checked through or not?

A. No. If you are talking about the transfer arrangement of sending it over to a parcel room of the outbound station.

Q. I am not talking about that.

A. Then I don't know what you are talking about.

903 Q. Listen to me, Mr. Nelson.

A. I am listening to you.

Q. All right. I am thinking only now—

A. Give a specific incident.

Q. A specific incident is a passenger who travels from New York on his way to Los Angeles. He takes a train from New York to Chicago. He has his bags in his Pullman compartment. He has the transfer coupon but he has not checked his baggage through. He gets to Chicago, and he decides that he is going to the Pump Room to have dinner or lunch in between trains, and he comes out to the transfer agency and says, "Here, take my bags across to the Santa Fe so I can go to Los Angeles and catch the train at 5:00 o'clock. Transfer them over here, and here is the coupon."

In that instance, did Parmelee transport that baggage for the transfer coupon and without any extra charge?

A. No, they made a charge for that.

Q. What charge did they make?

A. I don't recall whether it was 25 cents or 50 cents or what it was, and they also added into there the parcel room charge at the outbound station.

904 Q. What was the Keeshin charge? Was it higher or lower, or don't you know?

A. I don't recall what we are charging today.

Q. Let me give you a tariff that Mr. Keeshin filed, and maybe that will refresh your recollection.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit No. 39 this document coded as A-452 and taken from the Chicago Terminal Lines files dated April 19, 1956.

(Thereupon the said document was marked Plaintiff's Exhibit No. 39 for identification.)

By Mr. Freeman:

Q. Look at Plaintiff's Exhibit No. 39 and see if it refreshes your recollection? Does it refresh your recollection, Mr. Nelson?

A. I had forgotten all about this, because there are no passengers taking advantage of it, because there are two other arrangements that are more advantageous to the passenger.

Q. Is there a charge made by Keeshin for this service which I have been describing?

A. Yes, here it is.

905 Q. And the charge is $1.20 plus tax for the first piece of baggage and fifty cents extra for each bag and seventy-five cents extra for each trunk, is that right?

A. That is right.

Q. Do you know what the comparable Parmelee charges were, if any?

A. No, I don't recall.

Q. All right; we will get to that.

By Mr. Thompson: I was waiting not to interrupt. All of this is certainly immaterial to what motivated the railroads or anybody else in 1955 in awarding the contract, and it is also immaterial as to whether or not the public interest is served because somebody charges more. As I remember it, you can't even get a good nickel cigar any more. It costs you fifteen cents, and that is not Mr. Parmelee's fault—I mean Parmelee's fault or Keeshin's fault. Those are economic conditions that have nothing to do with whether the public interest is being served or not.

By Mr. Freeman: I agree one hunred percent with Mr.

Thompson, but unfortunately your Honor has not so
906 directed us. I don't think this has anything to do with what motivated them, and I would like to go into those motivations, but you have asked us as part of our proof, to put in the difference in rates and service, and I am trying to do it. This is a substantial difference in rates that was in effect when Keeshin started his operation.

I agree that there are economic changes that have occurred, and we no longer can get a good five-cent cigar, and a dollar is only worth fifty-nine cents.

By The Court: Is this part of the contract?

By Mr. Freeman: No, it is not.

By The Court: Objection sustained.

By Mr. Thompson: That is what I was going to suggest when counsel finished, that this isn't covered by the contract. It is a side service.

By The Court: Objection sustained.

By Mr. Freeman: I have no question pending.

By Mr. Thompson: And the statement counsel
907 makes that there is a substantial difference is without any substantiation and proof up to this point.

By Mr. Freeman: If I do not prove it, I hope the jury will please disregard it.

By Mr. Owens: Your Honor, I would make a motion that all of this testimony be stricken because it is beyond the scope of the contracts that were being bid upon.

By Mr. Freeman: I am following Mr. Thompson's examination; that is all. There isn't anything that is relevant.

By Mr. Freeman:

Q. You had indicated, Mr. Nelson, that practically every year there were requests for increases in rates, and every year you were advised of our labor negotiations; is that your testimony?

A. Yes, sir.

Q. How long have you been with the Baltimore and Ohio Railroad?

A. How long have I been with them?

Q. Yes, in any capacity.

A. Thirty-nine years.

Q. That takes you back to some time in the twenties, does it?

908 A. It does.

Q. Do you know what the Parmelee rate was, let's say in 1927 before the depression?

A. I have no idea whatsoever.

Q. Wasn't the rate then 85 cents, Mr. Nelson?

By Mr. Thompson: If the Court please, objection.

By Mr. Freeman: I have a right to examine this witness, and I am examining him as an adverse witness, and I am asking him if I can refresh his recollection.

By The Court: How is it relevant as to what happened in 1927?

By Mr. Freeman: Your Honor, there was an attempt made by counsel to demonstrate that each year there were rate increases and each year there were frantic labor problems. I want to demonstrate that is a false impression; that from 1927 to 1955 the experiences were very conservative, as I will demonstrate.

By Mr. Thompson: If the Court please, this plaintiff wasn't even in existence in 1927. What some other company prior to this plaintiff was doing is altogether immaterial, surely.

909 By Mr. Freeman: Well now, your Honor—

By The Court: I will limit it to more recent years, 1950 to 1955, and strike everything out before that time.

By Mr. Freeman: Your Honor, I would just like to ask this witness this question:

By Mr. Freeman:

Q. How many rate increases did Parmelee secure in a period of thirty years from 1955, thirty years back? How many rate increases were there?

A. I have no idea.

Q. Wasn't it just three rate increases in thirty years?

A. You had that many in the last four years.

Q. Let's see if we did, Mr. Nelson.

A. All right.

Q. We had one rate increase in 1954, is that right?

A. You had more than one. You had $1.05 to $1.12½ to $1.20 to $1.22 in 1954.

Q. And that increase was negotiated in April of 1954, wasn't it?

A. That is right.

Q. With half of the increase made retroactive to January?

910 A. That is right.

Q. And a provision for an escalator on the wage thing which went up two cents?

A. Yes.

Q. Wasn't the entire agreement with respect to those three stages one agreement reached in May of 1954?

A. It was.

Q. So that is one incident which involved three changes. Now, when was the rate increase prior thereto?

A. And you went from $1.05 to $1.00.

Q. That was in 1952?

A. In 1952, yes, and then—

Q. From 85 cents to a dollar?

A. Yes.

Q. When was that?

A. That was in—

Q. 1948?

A. 1948, yes. Previous to that, wasn't it 75 cents?

Q. When was it 75 cents?

A. Previous to 1948.

By Mr. Thompson: That is right.

911 By Mr. Freeman:

Q. It went from 85 cents to $1.00 in 1948?

A. Yes, but previous to 85 cents, wasn't it 75 cents?

Q. Yes.

By Mr. Keating: I object to the witness asking questions of counsel.

By Mr. Freeman: I will tell you; yes, it was.

By Mr. Freeman:

Q. Wasn't it 85 cents previous to the 75 cents?

Well, Mr. Nelson, just to summarize it and not make this ludicrous, isn't it true that when you first came with this railroad, the transfer charge was 85 cents, that it was reduced during the depression to 75 cents and increased during the war to 85 cents, and aside from that change and the three changes that you have mentioned there have been no rate changes other than reductions in rates that Parmelee put in?

912 A. When you speak of my early railroading, I wasn't interested in this problem whatsoever, and I couldn't tell you what the rate was.

Q. I have exhausted your recollection, but let me now ask you with respect to the more current years that the judge has asked me to concentrate on. When the rate went from 85 cents to $1.00 and then from $1.00 to $1.05, was there a large amount of military traffic handled by the Parmelee Transportation Company in the form of furloughees or men in military service going to and from duty?

A. Yes, there was.

Q. Didn't Parmelee have a special rate for the transfer

of military servicemen, namely fifty cents, instead of whatever the rate for adults was?

A. That is right.

Q. And wasn't that rate put into effect at the time the rate increase for civilian traffic was put into effect, approximately?

A. We went to 85 cents for furloughees back in 1950. Previous to that it may have been fifty cents.

Q. It was 85 cents when the rate went up to $1.20, wasn't it?

A. Yes.

913 Q. Prior thereto it was 50 cents, isn't that true?

A. No.

Q. I will put the figures in, Mr. Nelson, so you won't have to rack your brains, but the fact of the matter is and the only fact I want to establish through you, because the other is speculative, the fact of the matter is that when these three different rate increases were put into effect, there was a rate reduction put into effect for military traffic?

A. There was a reduced rate for military traffic.

Q. Was military traffic a very substantial portion of the traffic that the railroads and that Parmelee handled during this period from 1945 to 1950?

By Mr. Keating: Objection. It calls for a conclusion.

By Mr. Freeman: If he knows.

By the Court: He may answer.

By Mr. Freeman:

Q. By substantial, I mean over 25 percent.

A. You are asking me for something I have no direct knowledge of.

Q. You don't know whether or not it was over 25 percent of the traffic?

A. No; I have no direct knowledge of that.

914 Q. All right; did you say that the railroads are competitors with each other?

A. That is right.

Q. And in some instances very tough competitors, aren't they?

A. That is right.

Q. At the time that Parmelee was rendering this service, were they ever rendering it on a cost-plus basis, or whatever their cost was, and they asked the railroads to give them a profit?

By Mr. Keating: I object to that. That is completely irrelevant. I don't think there is going to be any evidence that the present transfer is on any cost —

By the Court: Read the question.

(Thereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. If you mean by that that the Parmelee Company came to us each year and said they had to have additional, an additional increase in their coupon rate because of their increase in costs, that is the answer. Otherwise, I don't know —

915 By Mr. Freeman:

Q. No. I mean did Parmelee ever serve you on the basis of sending you a bill of what their costs were plus ten percent?

A. No, sir.

Q. So that using that example, is what I mean, Parmelee has never served the railroads on a cost-plus basis?

A. No.

Q. When you asked Mr. Markin or when any railroad representative would ask him for the direct costs of the Parmelee Transfer service, didn't Mr. Markin advise that the transfer operation was part of a consoli-

dated picture which made it very difficult for him to allocate costs?

A. Not only very difficult, but he said he wouldn't do it.

Q. But he did say it was on a consolidated basis which presented a difficulty, and therefore he wouldn't do it?

A. That is right.

916 By the Court: How much longer do you have with this witness?

By Mr. Freeman: Just another question or two.

By the Court: I would like to recess.

By Mr. Freeman: I think it would be nice if you would. It would give me a chance to review my notes.

By the Court: We will take a ten minute recess.

(Whereupon a recess was taken, after which the following further proceedings were had herein, in the presence and hearing of the jury:)

By the Court: Bring out the jury. You may proceed.

By Mr. Freeman:

Q. As I understand it, Mr. Nelson, you did participate in the negotiations in 1948 and then in 1951?

A. Not 1948.

Q. But in 1951?

A. Yes.

Q. Then let me confine my remarks to 1951. In 1951 was there also a six member railroad committee formed?

917 A. Yes, there was.

Q. Was the Baltimore and Ohio one of the members of that committee?

A. Yes, they were.

Q. And were you its representative on the committee?

A. I was.

Q. Did that committee interview various contractors

to determine whether or not they could get a transfer service at less than Parmelee's then proposal?

A. I don't think we interviewed them as a committee at that time in 1951.

Q. Tell me the procedure that you followed.

A. Well, as I recall, we had a meeting, and it was decided we would ask a number of contractors, trucking contractors, and, as I recall, the individuals of the committee contacted these contractors rather than the committee as a whole as we did in 1954.

Q. Did you prepare a report, the committee prepare a report of the results of its negotiations during 1951?

A. As I recall, they did.

By Mr. Freeman: I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit 918 No. 40, this five-page document which I believe is the report of the committee dated June 22, 1951, and it happens to have a North Western code, North Western-211 to -215. These code references are merely the files that we took the papers out of.

(Thereupon said document was marked Plaintiff's Exhibit No. 40 for identification.)

By Mr. Freeman:

Q. Mr. Nelson, is this document that I have marked as Plaintiff's Exhibit No. 40, does this contain a report of this negotiating committee in 1951, together with a transmittal to the Chicago Terminal Lines by Mr. Padrick, and whoever was his — maybe it wasn't Mr. Padrick; let me see. Yes — by Mr. Arnold and Mr. Padrick to the Chicago Terminal Lines' committee?

A. Apparently it is.

Q. Did you participate in the preparation of this report?

A. May I read it?

Q. Certainly.

A. Yes, sir.

919 By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 40.

By Mr. Thompson: I can't find the report.. All I can find is the letter of transmittal. Excuse me a minute, your Honor.

By the Court: That is all right.

By Mr. Freeman: Your Honor, it is similar to the progress report of —

By the Court: I am waiting to hear Judge Thompson express his views.

By Mr. Thompson: Well, it is full of a lot of hearsay statements, and so on, but I guess it is of the same general character as some of these other reports.

My objection to it now is that it is immaterial to this issue on trial, and it has no relation to that subject.

920 By the Court: I will look at it on that issue.

By Mr. Freeman: In that connection, before you starting reading that, of course, this is an attempt to examine the witness on the same subject that Mr. Thompson examined him on. It had to do with the increase in rates in 1951 and 1952. I am presenting to the witness the report that was made in that connection.

What could be more relevant to this examination?

By the Court: I will let it go in.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 40.)

By Mr. Freeman: I had forgotten to tell the Court, and I would like to tell the Court now, that Mr. McConnell has left in order to participate in an argument before the Illinois Supreme Court, which is some kind of a commemorative service at the University of Chicago, and he

will be unable to be here tomorrow morning as well,
921 but I will try to carry on so we will not lose any time.

By the Court: I would like to say to the lawyers, the Bar Association has a big affair tonight, and we will adjourn about a quarter to five because their dinner is at 5:15. Those of you who want to attend may do so. I have got to be there with the Federal Judges, and then we are going to the Chicago University to attend their dedication.

By Mr. Freeman: Yes. That is what my colleague is doing. I feel naked without him.

By the Court: So we will adjourn earlier. I suppose the jury doesn't like that.

By Mr. Freeman:

Q. Mr. Nelson, what is the Railway Express Agency?

By Mr. Thompson: If he knows.

By the Witness:

A. They handle—

By the Court: Pardon me. I have been told that
922 some of you folks live out in the suburbs. How many?

Then we will recess at 4:30.

By Mr. Freeman: I like that, too.

By Mr. Freeman:

Q. Mr. Nelson, in 1951 or during the period from 1950 to 1955, was the Railway Express Agency an agency that transported baggage and parcels and was owned by a group of railroads, some 68 in number?

A. I believe that is correct as far as the ownership.

Q. In other words, it was—

A. Handling of less-than-carload lots of baggage.

Q. But it was an organization owned by the railroads?

A. That is right.

By Mr. Thompson: If he knows.

By Mr. Freeman: Now I would like to read to the jury a part of this report of June 18, 1951, of this negotiating committee. It is addressed to Mr. Padrick.

"Dear Mr. Padrick:

"As chairman of the committee appointed by you (E.B.P. February 11, 1951) to study all phases of
923 the transfer of passengers and baggage, Chicago, I am privileged to make the following report, with recommendations —

"Committee members included — " And they just listed the names of the six committee members, including Mr. Nelson.

"That committee, in its initial session, analyzed the scope of the work to be performed and reviewed a list of the companies possessing the apparent ability to perform an over-all transfer service between stations, Chicago.

"The twelve months statement (July 1949 to June 1950, inclusive) itemized payments to Parmelee Transportation Company by Chicago Terminal Lines in the amount of $1,405,000,"

and they calculated the number of passengers and baggage.

924 "The magnitude of the work to be performed necessarily narrowed the field of capable organizations possessing the ability to perform the transfer service to the satisfaction of the passenger, the carriers, and the vehicle company.

"Accordingly, the committee issued an invitation to Parmelee Transportation Company, Chicago Gray Line, Inc., Railway Express Agency, to meet with the committee, in turn, and discuss.

"1. Transfer of passengers with baggage between stations.

"2. Transfer of checked baggage between stations.

"3. City pickup and delivery service.

"The Parmelee Transportation Company reaffirmed their ability to perform the service required and stip-

ulated the following additional purchase orders had been placed for equipment to be placed in the Chicago transfer service: 40 new baggage transfer trucks,
925 first deliveries made in March, 1951; 85 new limousines, first deliveries expected in September, 1951:

"and estimated present capital investment totaled over $500,000 within the City of Chicago, devoted to the transfer of passengers and baggage between railroad stations, plus a maximum of 250 drivers and 55 passenger agents.

"The Chicago Gray Lines, Inc. replied as follows—" and they quote a reply from the Chicago Gray Line, which I will omit.

"The Railway Express Agency (Walter Peese, vice-president, Chicago, April 7, 1951) replied as follows:

"'As stated to you at the time and from information given me as to figure this work is being presently performed by Parmelee, it could readily be seen the figure we would be in a position to quote would be so much in excess of what you are presently paying Parmelee that we could not compete with them.'

"Other organizations, for example Dixon, Willett,
926 taxi cabs, were analyzed and the committee determined that the transfer at Chicago is of such scope that it would be to the detriment of the carriers to designate a dual service wherein one organization would undertake to handle checked baggage and a second organization handle passengers.

"Recommendations: After reviewing the magnitude of the work to be performed, the committee feels that the work and method of the Parmelee Transportation Company continue desirable, and it is our recommendation that the transfer of passengers and baggage, Chicago, remain with the Parmelee Transportation Company as long as the rates and service continue

satisfactory to the terminal carrying lines, Chicago.

"Indications to the committee are reasonable that any stipulation beyond the charge of $1.00 for adults and 50 cents for children, covering added payments by the carriers to Parmelee Transportation Company, can be terminated as of June 30, 1951, therefore, it is our further recommendation that you, as acting chair-
927 man of the Chicago Terminal Lines, explore the necessity of Terminal Lines, Chicago, continuing the payments outlined in your letter to Mr. C. L. Passolt under date of November 29, 1950.

"Re Chicago Gray Line, Inc. proposition—the thinking of the committee favors present limousine type of service because of its flexibility. Notwithstanding, it is our recommendation that you, as active chairman of the Chicago Terminal Lines, should acknowledge to Mr. Harry J. Dooley that the conditions of transfer of passengers and baggage between stations in Chicago, as performed by the Parmelee Transportation Company today, being satisfactory, it is not our disposition to change the present methods of operation—likewise it is not our disposition to treat lightly his proposition and his proposition, as submitted, will be retained for future review should there be a material change in service or methods as presently performed."

It is signed by Sidney W. Bone, passenger traffic
928 manager.

By Mr. Freeman:

Q. Mr. Bone is with the New York Central?

A. Yes, sir.

Q. Mr. Nelson, is it true that the Railway Express Agency was solicted to bid on the transfer service in 1954-55?

A. It was.

Q. Did they submit a bid of cost plus fifteen percent?

A. That is right.

Q. And they were rejected?

A. That is right.

Q. Is it also true that in each instance where there was a rate increase involving Parmelee, that the Railway Express Agency was invited to come in and analyze the situation and submit a proposal?

A. Not in each instance, no.

Q. There is only one other instance in 1948. Do you know whether they were solicited then?

A. No.

Q. You do not?

A. No.

By Mr. Freeman: Thank you. I have no further questions of you, Mr. Nelson.

929 By Mr. Thompson: We have no further questions.

(Witness excused.)

By the Court: Call your next witness.

By Mr. Freeman: I think if you want to excuse the jury, I will take the remaining time in an offer of proof.

By the Court: All right. Good night and have a lot of fun. Don't discuss this case with anyone, not even with your husbands or wives.

By Mr. Freeman: As a matter of fact, your Honor, would the jury just wait a second? I would like to spend tomorrow morning making offers of proof while Mr. McConnell is not here.

By the Court: We will let them come in, in case you have a change of program.

Ten o'clock tomorrow morning, ladies and gentlemen.

(Whereupon out of the presence and hearing of the jury the following proceedings were had:)

By Mr. Thompson: I would just like to say that I appreciate that it is difficult perhaps for counsel for the plaintiff, sitting within three or four feet of the jury, 930 to confer at all without conveying it in such a fashion the jury will overhear it.

I overheard one of the remarks this afternoon, clear over in my seat, which is twice as far away as the jury is.

By Mr. Freeman: You don't have to say any more, Mr. Thompson. If I did do that, it was certainly inadvertence, and we will, if there is any conferring, it will be in the lightest whisper. We certainly understand what you suggest is entirely proper.

By the Court: I think that covers that with the jury and with counsel.

By Mr. Freeman: I did say something, but I was turning away from the jury, and maybe you heard it and they didn't, but in any event—

By Mr. Thompson: That is what I was going to suggest. One time Mr. Tone called my attention to a situation when I was up here, in which he said you were turned toward the jury, and he couldn't hear what you said but three of the jurors looked down to listen to that instead of paying attention to what I was saying. It is a matter we have to be very careful about, and I am not going to repeat the statement you made this afternoon—

By Mr. Freeman: We will change tables. Do you 931 want to change tables?

By Mr. Thompson: No. Don't try to make this funny. It is serious. If you have to go on, I will make a record of what you did say.

By Mr. Freeman: Go ahead. Make a record of what I did say, Mr. Thompson. I have no objection.

By Mr. Thompson: When the judge ruled Mr. Goldstein's letter out, you said to Mr. McConnell, heard across the room, "That is crazy."

By Mr. Freeman: I didn't say it was crazy, but I may have thought it.

By Mr. Tone: I heard Mr. Freeman say it was crazy, and I was sitting farther away than the jury.

By the Court: I heard it, too.

By Mr. Freeman: Then I said it was crazy.

By the Court: I said to the jury I am not impressed by those matters. I don't feel offended. It has no impression upon the jury and I want them to disregard everything. I don't want to get into a controversy with either side.

By Mr. Thompson: I am not talking about your Honor being offended. You can take all this you please, but I don't want the jury poisoned by it.

By the Court: I will try to impress them that I am not—

932 By Mr. Thompson: I didn't say anything about whether you were or not. It is the jury I am concerned about.

By Mr. Freeman: All right. I said the ruling was crazy. All right.

By the Court: I realize this: It is a very important piece of litigation, important to both sides, and counsel sometimes lose themselves in the heat of passion and say something a little too loud. You have got to be understanding of those matters.

By Mr. Freeman: You can understand my reaction to the ruling. It was an adverse ruling, and what I was saying was that I thought it was wrong. Of course I did.

933 By the Court: I don't blame you for thinking it is wrong. I don't blame either side for disagreeing with me. I am as anxious to make as good and clear a record as I think is proper for the Court of Appeals to review.

I want to say it now again, counsel has repeatedly asked me to keep out offers of proof. I am not going to do it for one reason, because they have not stipulated with you on that basis.

You have a right to contend, and with all the power at your command, that the conspiracy is part of the public injury that you are trying to establish. I don't believe it goes before the jury, but I think for the Court of Appeals, they should have it in the record so they will not say to me, when the thing is over, that I have deprived you of a full opportunity to present your views so that they may review it.

By Mr. Freeman: In addition, of course,—

By the Court: Now when it comes down to some isolated items of proof, like an accounting, for instance, that may not come within the same category because I don't believe that an accounting would even go before this jury. On the basis, that is my judgment—

By Mr. Freeman: I think it is in a different category, your Honor.

934 By the Court: Entirely different category, but whether or not the alleged proposed sale of the real estate is or isn't, counsel got up and made the objection to subpoenaeing a witness. I believe, and I want to be consistent with it, that an offer of proof for the record—

By Mr. Freeman: Is enough.

By the Court: Is going to impress the Court of Appeals with the completeness of the trial so they will not have anything withheld from them, and if they think I am basically wrong on the separation of issues, they will say that "You were wrong because this was proper proof." If I am right, they will say I excluded it properly.

By Mr. Thompson: If the Court please, two or three times, maybe more, it has been said that counsel for the

defendants declined to stipulate, therefore you are going to receive offers of proof.

By the Court: No; no, I am saying—

By Mr. Thompson: I don't know what it is we are supposed to stipulate to.

By Mr. Freeman: It is too late now, my God!

By Mr. Thompson: Keep still.

By the Court: I am saying most respectfully, only in this sense, Judge Thompson, and believe me, it is
935 respectfully, I don't know what you offered to stipulate or what you decline to stipulate except for one thing that I do know: That in the absence of a stipulation, the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof.

By Mr. Thompson: There isn't any question about that. All of us agree with that.

By the Court: I am dealing very kindly when I say there is no stipulation, only because of my limitation on it, that is all.

By Mr. Thompson: But our point is that when the proof they offer is obviously immaterial to the whole case, or in this case where there is separation of issues, where it is obviously immaterial to the issue that is being tried, then there should be no offer of proof because we are completely helpless.

You keep saying that you want the Court of Appeals to have all this immaterial, damaging, prejudicial matter before them. Yet we are not ever going to be in a position to put proof in that meets these utterly extraneous offers of proof.

By the Court: How are they going to have it before them if I excluded it from the jury and I strike it from
936 the record?

By Mr. Thompson: Well, if there hasn't been enough in the last five days to show what your point is—

By the Court: That is right.

By Mr. Thompson: And to show whether you are fundamentally right or wrong, we can stay here until Christmas and we won't have the point made.

The point is now made. There is plenty of record here to decide the question on, and there simply is no purpose or point in going on for another week or two making the point which you want decided because it is already there, and I should think counsel on the other side would concede that it is already there.

937 By the Court: I wish they would, but if they don't I can't compel them. I say I do not compel you to try your case my way. I rule upon the evidence.

By Mr. Freeman: We are telling your Honor, however, that each day that we have proceeded here, we have eliminated witnesses, eliminated areas of proof. I feel that a few more days will complete our presentation.

By the Court: I will not even attempt to direct your course at this trial except by ruling upon evidence, or offers of proof.

By Mr. Owens: Your Honor, with respect to this ruling and limiting the scope of the evidence to certain issues, you talk in terms of the Court of Appeals having the benefit of this evidence.

Well, it shouldn't be in the record at all. Now if it is being tried, this case is being tried before a jury. The only thing the Court of Appeals should be interested in is what evidence is presented to that jury.

Now, if your Honor is wrong in excluding it, the fact that you exclude it puts you in error. Now you are in error excluding it from the jury, and there is no sense in encumbering the record with what you have excluded, and that is all we are doing.

938 By the Court: Except the Court will not know what I have excluded.

By Mr. Owens: It won't make any difference because the issue to be decided is an issue of fact before this jury, and when the court above decides whether you were right or wrong in excluding the evidence and denied the opportunity to present evidence, that is as far as it has to go.

By Mr. Freeman: Not at all.

By the Court: That is correct, except for one point. Counsel insists, and maybe they have a right to insist, that the offer of proof they are making is addressed to the question of public injury. That is where you and I differ.

By Mr. Owens: You have to determine what public injury is as far as you have limited this.

By the Court: I have not determined what public injury is.

By Mr. Freeman: Let me make one point emphatic while Mr. Owens is on his feet here before your Honor, a point that possibly has been slighted in a lot of this argument.

Of course, our primary position is that proof of conspiracy to restrain trade or monopolize trade and
939 commerce is part of the public injury as Congress and the Supreme Court has announced it.

In addition, however, in addition to the rates and service problem of public injury, we have alleged in our complaint that the ability of defendant Cross to perform his official duties in a fair, impartial and efficient manner was impaired, and the public and the Commission were substantially deprived of the value of defendant Cross' services. This we alleged as part of what happened as a result of this conspiracy.

My point is this —

By the Court: I see your point.

By Mr. Freeman: These defendants argued that that was not sufficient public injury. They recognize that this was part of the public injury.

By The Court: I am not going to elaborate on what I said. You have a right to allege that this is part of the public injury. I have a right to rule upon it, and the Court of Appeals or the Supreme Court has a right to say you were right or I was right, and I do not propose to tell you how to conduct your lawsuit.

By Mr. Freeman: All right. I will just—

By Mr. Thompson: Your Honor, while we are at this, and we have only enough time to survey a little of
940 the field rules, they have three or four witnesses subpoenaed, who are here for the sole and only purpose—and there cannot be any dispute between us about this—of testifying to these real estate transactions of Mr. Cross.

In other words, Mr. Kline is the person who bought the property out at Deerfield, and Mr. Wilbur, and some others are the people who handled the transaction when Mr. Cross bought his property. Then I don't know what they are going to do about these witnesses in Washington that handled the sale of the Cross property. That is neither here nor there—

941 By Mr. Freeman: We have the depositions.

By Mr. Thompson: I know you have taken their depositions, but as I say, they have this flock of witnesses, which it is perfectly obvious now, and there can't be any dispute about this, their depositions show and they will concede that they will testify to nothing whatever excepting the real estate transactions.

Your Honor has ruled that all the documentary evidence in respect to those transactions is excluded and immaterial.

By Mr. Freeman: So we will put in oral proof.

By Mr. Thompson: This record is awfully scratchy, and we get so much static that I don't get a chance to say what I want to.

The proof is clear as to what it is going to be. Now there can be nothing added by an offer of proof, to take a half a day to further encumber this record with an offer of proof.

It ought to be certainly stipulated between counsel that these witnesses testified in no other subject, and that is perfectly clear.

By the Court: I would be happy to do so, and I tell you now, and I tell Mr. Freeman, and he knows it—he is not even arguing any more—that I will exclude it from the record. We are only talking about his
942 right to offer proof.

By Mr. Thompson: He has no right to offer the proof.

By Mr. Freeman: Even your ruling, your Honor, of December 2, 1959, which excludes these documents, still allows us the opportunity to make an offer of proof with respect to them outside the presence of the jury, and that is all we are seeking to do.

By the Court: And that is where the difference of opinion is.

It is 4:30. Do you want to start?

By Mr. Freeman: I will start tomorrow morning.

By the Court: All right.

10:30 tomorrow morning, gentlemen.

(Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Friday, April 29, 1960, at 10:30 a.m.)

943 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Friday, April 29, 1960,
10.30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

944 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Rail-
road Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

945 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right. Is there anything before the jury comes out?

By Mr. Freeman: Yes, I think, your Honor, I would like to address you with respect to Exhibit 38, which was presented yesterday, and consists of a letter from Mr. Benjamin Goldstein as attorney for Railroad Transfer Service to the Mayor of the City of Chicago, and copies to the Corporation Counsel of the City of Chicago and the Chairman of the Committee on Local Transportation.

As I read the transcript and remember the discussion that occurred here, it seemed to me as though your Honor was excluding this on the ground that the contract was the best evidence.

946 By the Court: Was what?

By Mr. Freeman: Was the best evidence of what the arrangements were.

By the Court: Oh, no.

By Mr. Freeman: On what ground has it been excluded then?

By the Court: The contract being the best evidence does not apply where a lawyer's opinion interpreting the contract was subsequent to the consummation of the transaction.

By Mr. Freeman: Let me address myself to those remarks, if I may, and bring to your attention some additional information.

First, this statement by the lawyer as a representative of Keeshin is an admission against interest because it takes a position then which is in conflict with the position which the Keeshin attorneys take now in this trial.

It does not interpret a contract because the material that is set forth here, paragraph 3 of this letter, which is the only portion that I would want to bring to the attention of the jury, that paragraph deals with service that is not covered by the contract. This is something that

cannot be found in the contract.

947 The contract itself has not as yet been put in evidence. Ultimately it will. But the agreement, the contract between these railroads and Keeshin, can be read, and none of this material can be found in any respect. There is no indirect reference to this material in the contract. It is absent from the contract.

948 Secondly, your Honor, there is an attempt at comparison between two services, the Parmelee service and the Keeshin service.

The Parmelee service is not covered by formal contract. There is no formal contract anywhere to be found that determines the Parmelee service to which Mr. Goldstein refers.

This service was rendered pursuant to custom and understanding and long usage over many, many years, and it is established that way, plus possibly written memoranda, but I know of none. I know of no writing which deals with the phases of Parmelee service to which counsel here refers.

Thirdly, your Honor, there has been a great deal of attention given to your pretrial rulings, and I suppose your Honor feels that considerable consideration was given to the admissibility of these documents.

Now we specifically listed this Goldstein letter as Item 48, and it was listed separate and apart as one single item, this letter from Mr. Goldstein to the Mayor dated September 24, 1955.

Counsel raised objection to our offer of that letter and pointed out that it was irrelevant and hearsay,

949 the same objections that are made here, and your Honor on Page 6 of your memorandum handed to us says, with respect to Item 48, "Letter Mr. Goldstein to Mayor Daley, dated September 24, 1955, objection overruled."

I feel that in view of the fact that you have taken this position in overruling their objection and holding that this letter is admissible that I should call it to your attention forcibly.

I do feel that the letter is admissible. It bears specifically on the narrow issue that you have forced us to go to trial on. It is an admission in several respects, your Honor.

There is no place—we may be able to establish by other means that there were differences in service, but there is no place other than this communication that we can establish that two of these defendants felt that this difference was a very significant difference.

The representation is made to the Mayor of the City of Chicago, with copies to the principal officers of the City of Chicago. It is made as a representation to the public of the public's interest in this service. It is precisely and exactly the issue that your Honor has asked us to submit to the jury.

950 You have already ruled that this document is admissible, and I believe our discussion yesterday, or in our discussion yesterday, I may have been at fault or your Honor's ruling may have been precipitous, but I felt that your Honor was ruling on the basis of this interpreting a contract, and it does not.

951 This paragraph 3 describes services that are not going to be made available, a description cannot be found in any agreement, cannot be found in any contract as against services that Parmelee rendered, again a description of services that cannot be found anywhere."

You don't have here an interpretation of a contract, but besides, your Honor, we have authority, and it is good authority, that the fact an opinion is rendered by opposing parties in an admission does not matter. It

still becomes an admission of that opinion or that interpretation, and I don't think Mr. Thompson will quarrel with the scope and breadth of the admission against interest rule in so far as this concerns and encompasses an opinion or interpretation.

If I may summarize on this point, and I regard it as very, very vital, your Honor; I regard this ruling on this particular document as so basically in error as made yesterday and so right as made before, so basically in error that you have limited and restricted the issues, and this goes strictly to that point.

We find first the letter does not describe or interpret a contract. It deals with and describes services that
952 Parmelee renders, and you can find no description in writing of that service anywhere that I know of.

Secondly, it describes services that will not be rendered by Keeshin and the Railroad Transfer Service, and here again you can find nowhere, you can find it nowhere in the contract.

The contract will be presented when Mr. Keeshin takes the stand. We will put it in evidence. I will present it to you now if you like. There is nothing in this contract that is being interpreted by Mr. Goldstein.

There are no paragraphs, here are no sentences, there are no references. This is what Mr. Goldstein says, "We are not going to do."

It is the same as saying, "We have an agreement to render a transfer service, but we are not going to go to Los Angeles."

The fact that he says, "We are not going to go to Los Angeles" is not an interpretation of the contract. It is a statement of fact. "These are things we are not going to do."

Thirdly, there are very important admissions against interest. Fundamental in the proof of a case of this

kind or any kind is the fact that the defendants, or
953 the opposite parties, from time to time will present their position in writing, and if they take a contrary position at the trial, that previous admission becomes very, very pertinent in determining what is the truth.

One other thing, your Honor. We are seeking here reluctantly and against our fundamental position, but we are seeking here nevertheless to meet your Honor's limited and restricted direction to us with respect to the public injury issue, and a comparison of these services rate-wise and services necessarily will lie at the bottom of what your Honor has suggested, as I understand your statements.

We are seeking to make that comparison by this document. In the examination of Mr. Gurley, for example, on pages 633 and 634, Mr. Thompson said to Mr. Gurley:

"Will you compare an incident of this service between Parmelee and Keeshin?"

Objection was made, and the objection was overruled, and Mr. Gurley was being permitted to make a self-serving statement, not an admission against interest.

Here was a biased person, necessarily biased. I don't mean that this is a reflection against him but he
954 was interested in the defendants' side of this case, and he was permitted to render an opinion as to a comparison between these services, so how can you possibly withhold from the jury this further comparison of these services which are made by defendants, which are prejudicial to the position they now take, which is contrary to the position they now take, which is an admission against interest fundamentally and basically and which your Honor has already held on December 2, 1959, and then on March 10, 1960, that this document is admis-

sible?

955 We would like to re-offer it, and we would like to present it to the jury.

By the Court: Do you want to answer that?

By Mr. Meserow: May I just say this, your Honor, in the absence of the presence of the jury, that I think Mr. Freeman is merely trying to show by this letter that the Parmelee service, by Paragraph 3, used to once in a while, if a passenger wanted to stop at a hotel in the Loop or a department store, that they would drop them off.

The Keeshin people, the Railroad Transfer, does not do that. We are confined by our contract. The purpose of Mr. Goldstein in sending this letter to the Mayor was this, that on July 26—

By Mr. Freeman: Objection to the purpose.

By the Court: Objection sustained for the purpose beyond the letter. The letter speaks for itself.

By Mr. Meserow: If he wants to prove what the service of Parmelee is, he has all his Parmelee people here, and Mr. Scheeder can testify what he did.

If he wants to prove Keeshin didn't do it, he will have Keeshin as a witness, and he can ask him that.

He doesn't need the letter, and I am trying to state the purpose, in the absence of the jury, of this

956 letter.

Three days after the contract was given to Mr. Keeshin by the railroads, the City Council passed an ordinance—

By Mr. Freeman: Your Honor—

By Mr. Meserow: I am trying to give the reason for this letter.

By Mr. Freeman: I understand that you are.

By Mr. Meserow: And you are interrupting.

By the Court: I will sustain the objection to the document on the basis I outlined yesterday. It is not admissible

as a subsequent statement by a counsel, and it still interprets the contract as to what he thinks under the contract ought to or ought not to be done.

That can be proven by competent evidence, and it will be sustained.

By Mr. Freeman: Your Honor, we would offer to prove in this record that Mr. Goldstein, as attorney for and representative of the Railroad Transfer Service, Inc., on September 24, 1955, addressed a public communication to the Mayor of the City of Chicago and to the corporation counsel and chairman of the committee on local transportation, in which he said:

957 "Under the new service . . . "

And I interpolate, to be rendered by Railroad Transfer Service, Inc., commencing October 1.

". . . the coupon holder will no longer be allowed to use his coupon to procure at the expense of the railroads a free ride for himself with his accompanying hand baggage to a hotel, residence, business or office building in the Loop of Chicago, in the nature of local taxicab service, now possible under the existing Parmelee Transfer Service arrangement with the railroads. Nor will the passenger motor vehicles of Railroad Transfer Service, Inc., used in the new service accept non-coupon holders as cash fare passengers for transport between stations or from stations to a hotel or other terminus in the Loop of Chicago, in the nature of local taxicab service, as the passenger vehicles now used in the Parmelee transfer service now do.

"This wide cleavage between the limited new station-to-station transfer service and the present inter-
958 station and Loop terminus Parmelee transfer service, and the wide cleavage between the limited public

utility uses to which the passenger vehicles of Railroad Transfer Service, Inc., will be devoted exclusively and the additional local passenger transportation uses to which the passenger vehicles of the Parmelee transfer service are now devoted in part, is not generally understood in the public mind and among governmental authorities having jurisdiction thereover or concerned therewith.

"For these reasons, is it appropriate at this time to bring the above information to your attention, to make clear the specifications of the new service and to set out the precise use of the passenger vehicles of Railroad Transfer Servicee, Inc., therein, in conformity with applicable Federal, state and municipal laws."

959 That is the end of my offer. I assume from what Mr. Meserow says that we will be permitted to interrogate Mr. Keeshin on this subject.

By Mr. Meserow: I don't agree to that.

By Mr. Freeman: I thought he made that statement.

By the Court: I will rule upon the evidence as it is presented, and I will rule upon the objections. I don't care what his statement is.

By Mr. Meserow: I am not the judge here.

By the Court: If it has any propriety with respect to the service and the relationship, of course you can inquire.

By Mr. Freeman: Your Honor, may I, with all deference, inquire whether or not this memorandum that was entered by you on December 6 has any significance or shall it be completely ignored?

It seems to be, your Honor, that you are willing to ignore those instances, and I will point out another one to your Honor where you have ruled that documents are admissible, but at any time I seek to present a document

that you have ruled inadmissible, there is a waving of arms on my learned counsels' side, and an immediate denial.

I think, your Honor, that if there is to be a reconsideration of this memorandum, it should be reconsidered
960 for both sides and not for one side, and let me just in this connection point out that you have during the course of this trial rejected the Soo Line exhibits, which are exhibits, Plaintiff's Exhibit 11, 12 and 13.

These three documents were submitted in our list of documents that we intended to offer as Item 43, and there was an objection made by the defendant railroads joined in by counsel for the other defendants, that these documents were internal documents, immaterial and hearsay, and on page 9 of this memorandum of opinion that you rendered on December 2, 1959, on page 5, rather, those objections are overruled.

The Soo Line memoranda are to be considered admissible there, and your Honor has changed his ruling again, and it occurs to me, and I say it again with all due deference, that no favorable ruling that we have gotten in the past from you will stick, but every unfavorable ruling will be reiterated, and I don't think that is a fair trial.

By the Court: It is difficult to try a case here with the attitude and the inferences and the aspersions cast upon the Court by lawyers, both before the jury and away from the jury, and the record is clear.

961 I am ruling on the record, never off the record. I don't have to explain why I am ruling, but if you want me to, I will put it on the record.

962 By Mr. Freeman: I would like an explanation, sir.

By the Court: The Soo Line is not a party to the proceeding. As I recall, if I am talking about the same docu-

ment, it is not binding on anybody, and I have explained that.

I am ruling upon this document, not because it is not an admission against interest, but because it was given after the consummation of the contract, and merely constitutes a lawyer's opinion.

I don't want to spend any more time. Those are the rulings and I don't care to go over them again, and I don't want to be bickering with the lawyers—

By Mr. Freeman: I don't mean to be bickering, but I want to point out—

By the Court: If I am unfair, the record shows it, and the Court will review it. If I am fair, so will the Court review it.

Now, call the jury.

By Mr. Freeman: I will call Mr. Wilbur, please.

By Mr. Thompson: If the Court please,—

By the Court: Wait a minute before you call the jury.

By Mr. Thompson: This is the witness that I mentioned yesterday afternoon. Mr. Wilbur, as I recall it, is one of the real estate salesmen of the Baird and 963 Warner Company, and is the salesman who handled the transaction which occurred in the summer of 1955 when Mr. Cross purchased the Deerfield property for members of his family. So the deposition shows.

of 1955 when Mr. Cross purchased the Deerfield property for members of his family. So the deposition shows.

Now this is all perfectly clear from the deposition, and so also is the matter of other real estate dealings of Mr. Cross clear from the depositions. They deal with no other subject.

The Court can rule now as well as at any time on these questions without having brought to the jury's attention that he is a real estate agent, and then have

some other questions asked which obviously will be to convey to the jury that this transaction took place.

The defendants, of course, when the Court sustained the objection, are not permitted in the orderly trial of a lawsuit to put on evidence to meet evidence which the Court has rejected. Now the Court reviewed these things in the pretrial hearings. They were fully discussed, and the Court ruled specifically that none of this evidence respecting real estate transactions of Mr. Cross will be received, and obviously they have nothing to do with whether or not the public interests were affected because they go only, and that is a very remote sense, to issues which
964 are not before this jury.

We have had so much of this going on before this jury that we are almost driven to the point of challenging the hearing of the case by the jury. In other words, we are almost driven by the conduct of counsel to move for a mistrial, and I have a feeling that the course of conduct is directed purposely to requiring us or forcing us almost to move for a mistrial.

965 Now Wigmore says, in his Volume VI, Third Edition, Section 1808:

"The general principle that a counsel may not make assertions of fact concerning matters not otherwise properly put in evidence may be sought to be violated by indirection, but the prohibition applies with equal strictness. There are two chief ways in which this may occur: First, in a preliminary statement to the judge as to the tenor of evidence which the counsel desires to offer; and, secondly, in putting the questions to witnesses.

"Where a certain class of evidence is desired to be offered, and the offering counsel knows either from the very nature of the evidence or from objection made by the opponent at the inception of the offer

or upon a previous analogous offer that its admission will be disputed, and therefore that a judicial ruling will be necessary, a sense of professional honor will tell him that in the ordinary case the details of the offer should not be stated in the jury's hearing be-
966 cause of the possibility that the statement may be taken by them as true and relevant even though it is excluded by the judge.

"In this respect, the rule of law enforces the standard of honor and requires the offering counsel either to present the offer in writing without reading it aloud to the court and the opposing counsel, or, if argument is expected, to afford an opportunity for the jury's retirement before orally stating the offer.

"No doubt much must depend upon the circumstances of each case and the discretion of the court should control, but it is clear that the judge should interfere ex mero motu, and that so far as feasible no statement of proposed evidence should be allowed to be made in such a way as to allow the jury to obtain an impression of its truth and relevancy and to place the opposing counsel at the disadvantage of objecting to proposals whose known tenor may
967 be misused against his party.

"The same general principle governs the putting of questions to witnesses. The jury may under certain circumstances obtain an impression from the mere putting of illegal questions, which are either answered in the negative or not answered because illegal and excluded, that there is some basis of truth to the question.

"When a counsel puts such a question, believing that it will be excluded for illegality or will be negatived, and also having no reason to believe that there

is a foundation of truth for it, he violates professional honor. It is generally agreed that where the counsel has been warned by a prior successful objection of the opponent to similar evidence that it is illegal, he will be prevented from again putting questions dealing with the class of facts affected by the same illegality,"

and so on.

968 In other words, the whole tenor of the article is exactly what all lawyers that have ever tried lawsuits know is true, that the mere asking of these questions and making assertions in the presence of the jury—obviously this jury is like all other human beings. Its curiosity gets aroused, and it gets to the point where they are saying in their own minds, well, these lawyers who are objecting are seeking to keep us from some very juicy evidence, and they get the impression eventually that the court is barring us from hearing what is continually asserted before us by the other side is competent and material evidence on the point before the Court.

Now we are getting into a situation here where it is utterly impossible for this jury to sort this out. I don't know how we can ever argue this case to the jury and keep it sorted out in our own minds, and your Honor is going to have difficulty in a way in sorting it out and instructing them. I know you will instruct them emphatically, as you should, that all of this should not be considered by them, but there comes a point where it is beyond human ability and particularly laymen who are only occasionally in court, to know what this is.

969 Now, of course, all the rules of modern practice have been designed to prevent treating a lawsuit as a game, and therefore pulling fancy tricks, and so on, before a jury, and that is why we have pretrial conferences.

That was the very purpose of having these pretrial hearings, which were rather extensive. We had them before Judge Robson all day, and your Honor had the transcript of that hearing and read it, as your Honor announced to all of us, and then you had hearings yourself os two different and separate occasions.

Of course, the rulings are utterly meaningless so far as the defendants are concerned unless they are observed because the mere fact that you ask questions about these real estate transactions brings to the jury's attention that there were real estate transactions, and it seems so obvious that these transactions are immaterial to the issue the Court has carved out of this case that there oughtn't to be any debate about it.

I should think that if we were trying the whole case that all of this would be properly excluded because, even
970 though in some remote sense, it might be logically argued that it has some relevancy to some issue in the case, it is a collateral issue obviously, and under the well established rule that mere relevancy doesn't always admit evidence, and that this is the kind of evidence that ought to be excluded because it does bring in a collateral and diverting issue.

In other words, the jury is going to be put in the position, as the record now shows, by virtue of the depositions taken before trial and as has been represented to your Honor, there is going to be put in issue whether Mr. Cross bought this property in Deerfield for an improper purpose.

There can't be any contention, it seems to me, by any evidence that has been produced or any that we know about, that any one of these defendants other than Mr. Cross had any knowledge of this transaction, much less had any part in it.

971 So the issue to be submitted to the jury on this evidence that is now being tendered would be did Mr. Cross buy this property for some purpose that is improper, or did he buy it for the purpose for which he said he bought it? In other words, a man has got a right to buy a home here for his daughter, if that is the truth about it. But whether it is, all the jury is going to be able to try there is the issue of whether or not this property was *properly and legitimately bought, and* it will only be an issue in which Mr. Cross is involved.

The implications from it, of course, are nothing but a substantiation of their suspicion and theory, that it was bought for the purpose of coming here and taking a position with Mr. Keeshin in the transportation field. Whereas the testimony, as appeared in the pre-trial depositions, which are all filed here in court and available to the Court's inspection, Mr. Keeshin emphatically denied that there was any such arrangement, and Mr. Cross emphatically denied that there was any such arrangement, and there is nothing to support it except their suspicions, and then bringing in these collateral issues which, by innuendo, will be drawn upon.

I might as well address myself to what will be the
972 proffered testimony of Mr. Kline.

Mr. Kline was at one time, at the time. I guess, of the transaction in question, an employee of the Pennsylvania Railroad Company. He had been an employee of that company for many years, and is now retired by virtue of age.

Mr. Kline and his wife, so the undisputed evidence shows, in the spring of 1956 were looking for a piece of property, and they had a real estate agent looking for it, and found this property up in Deerfield. Mrs. Kline liked it, and she looked at the property, and after

loking at it, she decided to buy it, and they took cash out of the Oak Park Bank and paid for it immediately.

Well, of course, you can understand that that collateral issue will be tried to the jury as the whether or not that was a plain, every day, ordinary transaction, and the suspicion and innuendo that will be drawn from it is that the Pennsylvania Railroad arranged with Mr. Kline to bail Mr. Cross out of a difficult situation when he got caught, as they will argue.

Of course, that sort of thing is the kind of thing that is utterly impossible for us to meet. We can bring the proof, and prove to a point of conclusiveness, it seems
973 to me, that there is absolutely nothing to this Kline transaction which wasn't an every day transaction, and which wasn't a situation that might occur at any time. Certainly all these other defendants will be so highly prejudiced by that situation, including the Pennsylvania Railroad, that you never can erase the suspicion and innuendo out of their minds.

Now I direct attention particularly to the fact that this transaction in all its parts took place in months following the institution of this lawsuit, after the whole thing was a matter of public record, and certainly—

By the Court: The Court is very familiar with that transcript, and I have examined it.

By Mr. Thompson: I should think so.

974 By the Court: I have known all about it. I don't want to interrupt you, Judge Thompson, but I will say to you now that if this case were tried on all the issues, I cannot agree with you that the testimony would not have to go in because it would have a definite tendency towards the alleged conspiracy, if any, and that any subsequent acts may be admissible, in my judgment. But that is not the point.

I agree with you, Judge Thompson, that the court's

patience has been taxed almost by both sides on my rulings because I have had to rehash them and review them. I have followed these arguments of counsel on my invoking of my rule. I have invoked it in the face of opposition from all the parties, without any exception.

I will admit, and I agree, and I resent the type of questions that have been asked where the answers have been included in the questions. I will deal with the jury when I get to it, and I want to tell you now that I have much more confidence in the intelligence and reaction of juries than as expressed by counsel around the table. I have been with them for twenty-seven years. I have lived with them, and they have far more intelligence than the courts and counsel believe, and that is the 975 great system that we have.

They sometimes resent that type of attitude towards the court or towards opposition counsel, more so than they imbibe the so-called undertones and reflections and aspersions and belligerence toward the Court. If they don't think I am trying to conduct an honest, fair trial here, that is my trouble, not yours.

I have ruled repeatedly, and again I say with due consideration to your table, counsel has offered to stipulate without any witnesses to make offers of proof, without the jury, without requiring a witness to be on the stand. That was rejected.

I am not criticizing you. You have your own reasons for rejecting it. You have a right to reject it. But you have put me in a position now where I can't say to counsel I know what you are going to do, and you can't do it. You have got to put a witness on the stand so that the first question he asks, when he hits that territory or that area, I am going to say stop it, you can't go on with it.

Now I can't blow hot and cold in this case. I can't blow

hot and cold or the plaintiff or the defendants. I am trying to conduct a lawsuit as fairly and as legally and
976 as lawfully as I know how, so that when it gets before the Court of Appeals, I will not be told that how did you know when you excluded this offer of proof after the introduction of a witness and the asking of one question?

I am not worrying about what the jury might get. I admonished counsel again and again not to incorporate in his question what he wants the witness to answer. I followed it. I know it, and I haven't had it before in this kind of volume of repetition.

I have had insults. I have had abuse. I am going to deal with it when the proper time comes. But I cannot anticipate what counsel will do or what questions he will ask, and I don't propose to repeat and rehash the rulings I have made upon the admissibility of documents or the admissibility of evidence because I think I am familiar with the case, I have read the briefs, I have read the pleadings, I have heard the objections, I follow it, and I rule upon them. I don't dilly-dally about them.

I make a specific ruling, either sustain it or overrule it. There is no such thing as let it go in for what it is worth. There isn't one single time I have said that.

I have ruled, and I have stricken it, and I will
977 deal with the jury when the proper time comes by instructions. I am not worried about going off on a tangent on something that is not in the record.

Now, bring in the jury.

By Mr. Freeman: Just one word. I deeply appreciate your Honor's attitude, and I should suggest that in most respects that what you have said is perfectly proper and perfectly understandable. But I do feel that your attitude with respect to our questions has not been a matter of reiteration, and that we have in all good faith from

the beginning said to you and said to counsel, give us the first twelve men for a jury—

By the Court: I have said that.

By Mr. Freeman: (Continuing) —excuse them, and we will make an offer of proof, reject it and we are willing—

By the Court: I have just said that.

By Mr. Freeman: All right. Lacking that, and at this stage of the game we can no longer make such a demonstration, we have asked proper questions. We sincerely regard them as proper.

Now your Honor, when we are examining an adverse witness—

By the Court: Except for one thing. I have ruled
978 on several or many occasions not to answer the question, and you went right ahead and said isn't that a fact that such-and-such happened, in direct violation and challenge of that ruling, and that is what Wigmore says is unbecoming in the proper practices in the courts.

By Mr. Freeman: Your Honor, when we are dealing with an adverse witness, we are permitted to ask a leading question.

By the Court: Not when the Court says you are in the wrong area. Sure, you are, on the proper subject, and if you ask a question that isn't it a fact that your price was twenty-five cents or twenty-three cents or twenty-one cents, I have never stopped you. But when I said you could make your offer of proof, you proceeded to ask isn't it a fact, and I know the record is replete with it, and that is what I am talking about.

Call the jury.

979 By Mr. Thompson: If the Court please, may I make just one suggestion? This is not argument. We are having too much of it already.

By the Court: I don't mind argument.

By Mr. Thompson: I appreciate you don't, but time is of some value.

I suppose or suggest that they call this witness to the witness stand and ask the questions they need to ask to lay the foundation, and if any part of the examination out of the presence of the jury indicates that it does have relation to this question, then the Court can rule, and the matter can be repeated in the presence of the jury.

By the Court: I overlooked one thing. I meant to say to you, Judge Thompson, if you have any desire to make any motions for mistrial, I don't want to encourage it or discourage it, as that is part of your practice and your duty, but I will pass upon it in due time. I am not going to comment beyond that.

As far as this is concerned, Mr. Freeman, am I to understand that the witness you are now calling will testify to nothing else than what is in the depositions?

By Mr. Freeman: No, that is not so. There is one document, your Honor.

980 By the Court: Send for the jury.

That is what I can't anticipate, and I don't want to do it.

By Mr. Freeman: It is one document we got from the witness subsequently.

By the Court: Send for the jury.

(The following further proceedings were thereupon had, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. We have been working, so you will pardon us for delaying your being called out.

I want to ask you one question, ladies and gentlemen of the jury: Yesterday in the trial of this case, did any of you hear a disparaging or insulting remark made by counsel to an associate with respect to the Court's ruling of the admissibility of evidence? If you did, I want you, with all the sincerity in my heart and with all the decency of my soul, to disregard it.

I cannot afford to have anything creep into this case that is prejudicial one way or the other, either to the Court or to counsel, because I am to deal with it and not you folks. You must not be influenced, and again
981 I am going to tell you, by anything that is being done here outside of the legitimate admissible proper testimony from the witness stand, and when the Court rules that the question is improper, any intonations, any inferences from the form of the question do not change the Court's attitude and does not widen your latitude. Is that clear?

We are determined here only to pass upon the evidence from the witness stand or from the proper depositions nothing else. Attitudes of lawyers, belligerance to the Court or to each other, doesn't make any difference. That is my problem, not yours.

I just want you to keep faith with me, and I am sure you will, that when the final times comes you will decide upon that as I instruct you. Is that clear?

All right; proceed.

982 By Mr. Freeman: Mr. Wilbur is hard of hearing, and if he doesn't get the question, it is because of that.

ALBERT A. WILBUR, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address?

A. Albert A. Wilbur, Baird and Warner, 215 North Dearborn Street, Chicago.

Q. What occupation are you in?

A. Real estate.

Q. Were you in the real estate business in 1955?

A. Yes, sir.

Q. In 1955, Mr. Wilbur, were you engaged by Mr. Hugh Cross with respect to a real estate transaction?

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained, and I forbid you to answer, and I forbid you to go along with further questions along that line.

By Mr. Freeman:

983 Q. Mr. Wilbur, will you tell us what occurred in 1955 with respect to a property in Deerfield, Illinois?

By Mr. Meserow: Objection.

By the Court: Objection sustained. Don't answer. It is an improper question and beyond the scope of this issue.

By Mr. Freeman: I ask to have marked, for the purpose of identification as Plaintiff's Exhibit No. 41, a letter dated July 19, 1955.

By the Court: If it pertains to this issue, it is excluded. I am asking you on your word to so say to me.

By Mr. Freeman: Of course, it pertains to this issue.

By the Court: I have no objection to him marking it.

By Mr. Freeman: And having him just identify the letter.

By the Court: All right.

(Thereupon the said document was marked Plaintiff's Exhibit 41, for identification.)

984 By Mr. Freeman:

Q. Mr. Wilbur, I show you the letter marked Plaintiff's Exhibit No. 41 for identification, and I ask you whether you wrote this letter on or about July 19?

By Mr. Owens: Your Honor, I am objecting to any question being asked on this document.

By the Court: He may answer if he signed it, for identification, and we will handle it from there on.

The objection is overruled on that.

By the Witness:

A. Yes, sir, I wrote that letter.

By Mr. Freeman:

Q. And to whom was the letter addressed?

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained. It speaks for itself. It is identified, and you can't interrogate about it, unless it doesn't have a name on it, but it speaks for itself.

By Mr. Freeman:

985 Q. Mr. Wilbur, were you acting pursuant to instructions as a real estate broker when you prepared this latter?

By the Court: The objection will be sustained.

By Mr. Meserow: Objection.

By the Court: You can't interrogate along these lines.

By Mr. Freeman: I offer in evidence Exhibit No. 41.

By Mr. Freeman:

Q. First, did you, in fact, mail the letter, Mr. Wilbur?

A. I don't know that. I expect so.

By Mr. Owens: Objection to what he excepts.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 41.

By Mr. Owens: Objection.

By the Court: Objection sustained.

By Mr. Thompson: And I move to strike the answer of the answer of the witness that he suspects he mailed it.

By the Court: It may be stricken.

By Mr. Freeman: I also would have marked for
986 the purpose of identification as Plaintiff's Exhibit No. 42, this letter by Mr. Wilbur to Mr. Diver dated November 14, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 42, for identification.)

By Mr. Thompson: We move to strike the part of the inquiry which reads from the document, the addressee and the writer of the letter. He has the right to ask the witness whether or not he signed the letter, but we object to any content of the document being indicated by the question, and move to strike it.

By Mr. Freeman: I asked a perfectly proper question, your Honor.

By the Court: Read it.

(Thereupon the record was read as above recorded.)

By Mr. Thompson: He hasn't asked him anything yet.

By Mr. Freeman: I was just marking it.

987 By Mr. Freeman:

Q. Mr. Wilbur, did you prepare this letter, and does it bear your signature?

A. Yes, sir.

Q. And was this letter prepared pursuant to instructions that you had received?

By Mr. Thompson: Objection.

By the Court: Objection sustained, and the question may be stricken, and he is ordered not to answer.

By Mr. Freeman:

Q. May I ask you, Mr. Wilbur, whether in these transactions you were acting as a representative of some individual?

By Mr. Owens: Objection.

By the Court: Objection sustained, and he doesn't have to answer.

By Mr. Freeman: I want to establish a status.

By the Court: It has no bearing on this issue before me.

By Mr. Freeman: I see.

By the Court: And that is the ruling of the Court.

988 By Mr. Freeman:

Q. Mr. Wilbur, I show you a document—

By Mr. Freeman: Which I will have marked, for the purpose of identification, as—a memorandum dated November 16, 1955—which I will mark an Plaintiff's Exhibit No. 43, for identification.

(Thereupon said document was marked Plaintiff's Exhibit No. 43 for identification.)

By Mr. Freeman:

Q. (Continuing) —and I ask you to read this document and see if it refreshes your recollection with respect to a conversation that you had on or about that date.

By the Court: Answer it just "Yes" or "No" and not the substance.

By Mr. Freeman: I don't know whether he hears me or not.

By the Court: I don't either, but the answer is "Yes" or "No." I don't want any substance of it.

By Mr. Thompson: He heard you. I am having an awful time looking through you, Mr. Freeman.

989 By the Witness: What is the question?

By Mr. Freeman:

Q. The question is, Mr. Wilbur, does this document refresh your recollection with respect to a conversation that you had on or about that day with Mr. Diver?

A. Yes, sir.

By Mr. Freeman: I will ask to have this marked, for the purpose of identification, as Plaintiff's Exhibit No. 44.

(Thereupon said document was marked Plaintiff's Exhibit No. 44 for identification.)

By Mr. Freeman:

Q. Does this document, Plaintiff's Exhibit No. 43, correctly set forth the substance of that conversation?

By Mr. Owens: Objection.

By Mr. Freeman: I am not asking him for the substance. I want him just to identify it.

By the Court: He may answer "Yes" or "No."

By Mr. Freeman:

Q. Does it?

By Mr. Owens: I am objecting further, your Honor,

990 as the question posed to him was with respect to another individual who is not a party to this case.

By the Court: He may answer "Yes" or "No." I am not going to let any part of that conversation go in or any corrections on it or anything else. He may answer "Yes" or "No," does it reflect the true conversation. That is all.

991 By Mr. Owens: Mr. Freeman then identified a person with whom that conversation was had, and I move that be stricken.

By the Court: The document speaks for itself. He will offer it in evidence, and I am going to rule upon it without any comment on the contents of it.

By Mr. Freeman:—

Q. Mr. Dever—

A. Yes.

Q. Thank you. Now, I show you a document that I have had marked as Plaintiff's Exhibit No. 44, for identification, which is a two-page memorandum dated November 17, 1955, and again I ask you whether or not this document refreshes your recollection with respect to a conversation you had with Mr. Diver on or about November 17, 1955?

By Mr. Thompson: We object to this constant reference to Mr. Diver. He is no part of this lawsuit.

By Mr. Freeman: I don't think the jury knows who he is, but I am identifying him for Mr. Wilbur.

By Mr. Thompson: Ask proper situations. Ask him if the document refreshes his recollection, and no-
992 body will object to that. You are making a speech in connection with it.

By Mr. Freeman: Your Honor, I resent the remark. I think I stand here in a very embarrassed and shackled position. I don't think it is necessary for Mr. Thompson to advise me how to ask these questions.

By the Court: I don't resent the remark. I think it is in bounds. If Mr. Diver is not a party to the proceedings, you ought to know it is not admissible under any conditions, and I am merely going to let him answer yes or no. Counsel has a perfect right to make objections. Nobody stands shackled here. If anybody is shackling anybody, I am doing it, because I have limited the issue.

By Mr. Freeman: You have.

By the Court: All sides objected to it, and I want the jury to know it is my doing, not that of anyone else.

By Mr. Freeman: Not all the sides. There is one
993 of the defendants that is very much for this.

By the Court: There was a general objection by

everybody at the outset when I ruled upon it.

By Mr. Freeman: I am sorry, your Honor.

By the Court: All right.

By Mr. Freeman:

Q. The question, Mr. Wilbur, is does it refresh your recollection of this conversation?

A. Yes.

Q. Does it accurately set forth the substance of that conversation?

A. I couldnt answer yes or no on that practically.

By the Court: Then you can't answer it.

By Mr. Freeman: What was the last word of the answer?

By the Court: "I can't answer yes or no."

By Mr. Freeman: The last word?

(Thereupon the record was read as above recorded.)

By Mr. Freeman:

Q. Does it, in substance, set forth the conversation with reasonable accuracy?

994 A. Yes, sir, it does.

By Mr. Freeman: I offer in evidence the three documents previously marked as Plaintiff's Exhibits 42, 43 and 44.

By Mr. Owens: Objection.

By the Court: The objection will be sustained.

By Mr. Freeman: I am to assume, your Honor, that all questions that I would put to this witness with respect to his activities in 1955 in connection with this real estate transaction, whatever it is, would be objectionable and sustained, and this entire line is being prevented?

By the Court: That is correct.

By Mr. Freeman: Then I will excuse the witness, and I will make an offer of proof.

By the Court: All right.

By Mr. Thompson: Just a minute, please.

We object to the statement.

By the Court: The objection will be sustained, and it may be stricken.

By Mr. Freeman: What statement?

By the Court: That you would make an offer of proof.

995 By Mr. Thompson: On a real estate transaction.

By the Court: The jury has no right to know about it. It is to be excluded from them.

Proceed with the next witness.

(Witness excused.)

By Mr. Freeman: Your Honor, I would like to straighten that out for myself and for the jury. I believe that where questions are asked which I regard as proper and you, in your wisdom, decide that the question should not be answered, that I do have a right not in the presence of the jury to make an offer of proof, and that right I propose to adhere to.

By the Court: There is no question about it, but you can't tell the jury that you are going to make an offer of proof, because that has connotations, intonations, and inferences, and they are not to have it. That is why you have it outside of the jury.

Call the next witness.

By Mr. Freeman: I would like to make my offer of proof, your Honor, and I will take the rest of the morning and do that.

By the Court: All right, the jury may be excused.

996 By Mr. Thompson: You are excusing the jury until what time, then?

By the Court: For lunch, and have a nice time.

By Mr. Thompson: Until what time?

By the Court: Until 2:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Freeman: Did you say you were making a motion for a mistrial?

By Mr. Thompson: I didn't say anything of the kind. Just keep still about it. I will make my motion when I get to it.

By Mr. Freeman: All right.

By the Court: Make your offer of proof.

By Mr. Thompson: The jury is passing through the door, your Honor.

By the Court: They are going out to lunch. We will take a five-minute recess. It may take five minutes, and then we will be sure they are out.

(Thereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

997 By Mr. Thompson: I have a group appointment at 12:15.

By the Court: We will recess until 2:00 o'clock.

By Mr. Meserow: Can you make it until 2:15?

By the Court: I can't go that far.

By Mr. Freeman: 2:00 o'clock, your Honor? I would not oppose 2:15.

By the Court: 2:00 o'clock. I want it at 2:00 o'clock so we can go on.

(Whereupon a recess was taken in the hearing of the above-entitled case at 2:00 o'clock p.m. of the same day, Friday, April 29, 1960.)

998 • • (Caption—No. 56 C 323) • • •

Chicago, Illinois
Friday, April 29, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John J. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

999 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of Defendant railroads.

1000 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(The following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: I only want one word of advice on a factual situation with the Court. Mr. Monaco is one of the witnesses who has been subpoenaed, and he is the witness, the subject of whose testimony will be this truck transaction with Hugh E. Cross down at Carrollton, where your Honor has already ruled on the documents. I wanted you to know that.

By the Court: Same objection in the same category.

By Mr. Thompson: When we make the objection, we won't have to explain that.

By the Court: Bring out the jury.

By Mr. Freeman: Before you bring out the jury, your Honor, I have a motion I would like to make. In view of your remarks to the jury this morning, which I have now reviewed, I find, and my associates find, and we are of the opinion we cannot have a fair trial by this jury, and therefore we request that you withdraw a juror,

1001 and we move that you declare a mistrial.

By the Court: Motion denied. I have given a lot of consideration to what I told the jury in open court, and, if anything, I have mentioned no names of lawyers, and I referred to no sides. The motion is denied. Call the jury.

By Mr. Freeman: I am going to make an offer of proof of Wilbur. However, I can take Mr. Monaco as long as the jury is coming in.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

1002 FRANK L. MONACO, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and your address, sir?

A. Frank L. Monaco, 5205 South Parkside, Chicago, Illinois.

Q. What business or profession are you in?

A. I work for the Lasham Cartage Company here in Chicago.

Q. Are you district manager of the Lasham Cartage Company?

A. At the present time, yes, sir.

Q. Were you district manager in 1955?

A. I believe at that time, yes, sir. I was mostly connected with maintenance and—

Q. Finish your answer.

A. I am connected with maintenance, the district manager in connection with maintenance and equipment.

Q. And is the Lasham Cartage Company related or affiliated to some other corporation?

A. Yes, sir.

1003 Q. Is it a subsidiary of the United States Freight Lines?

A. The United States Freight Company, I believe, sir.

Q. It is a subsidiary of the United States Freight Company, is that it?

A. Yes, sir.

Q. Do you know what affiliation the United States Freight Lines had in 1955 with any railroad?

By Mr. Thompson: We object to that as immaterial.

By the Witness:

A. I don't know.

By Mr. Freeman: He doesn't know, so I can't ask him any further about it.

By the Court: I don't know the purpose of this. I will overrule the objection.

By Mr. Freeman:

Q. Mr. Monaco, did you have occasion in 1954 to make an analysis of equipment that the Lasham Cartage Company would require, more specifically tractor equipment?

A. What was that, sir, again?

1004 (Whereupon the record was read as above recorded.)

By the Witness:

A. As far as I can remember, I possibly did.

By Mr. Freeman:

Q. And had you recommended in 1954 that the Lasham Cartage Company acquire 30 tractors from the International Harvester Company?

By Mr. Thompson: We object to this as immaterial. It has no relevancy to this case.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Monaco, did you place an order in 1955 for 30 tractors with anybody?

By Mr. Thompson: Objection to that as immaterial.

By the Court: Same objection, same ruling.

1005 By Mr. Freeman:

Q. Mr. Monaco, did you place an order for thirty tractors with Hugh E. Cross at the Carrollton Farm Supply Company?

By Mr. Meserow: Objection:

By Mr. Thompson: I object.

By the Court: I admonish you not to do that.

By Mr. Freeman: I have to ask that question.

By the Court: You have asked the same question—

By Mr. Freeman: You said it was not relevant.

By the Court: Objection sustained. The question may be stricken and you needn't answer.

By Mr. Freeman: I want to have marked for the purpose of identification as Plaintiff's Exhibit 45, this two-page order reputedly signed by F. L. Monaco—

By Mr. Thompson: Now, if your Honor please. Mark

the document, and that is all you need to do.

1006 By Mr. Freeman: This is dated March 11, 1955, and addressed to Mr. Hugh E. Cross, Carrollton, Illinois.

By Mr. Thompson: Your Honor—

By the Court: That may be stricken. The document may be marked, and counsel's remarks may be stricken as to whom it is addressed. The document speaks for itself.

(Thereupon the said document was marked Plaintiff's Exhibit 45 for identification.)

By Mr. Freeman: And I would like to have marked as Plaintiff's Exhibit 46, this two-page document allegedly signed by Mr. Monaco, dated March 11, 1955, and addressed to the same individual.

By Mr. Thompson: If the Court please—

By the Court: I ask you not to repeat to whom it is addressed.

By Mr. Freeman: I cannot understand, your Honor. I am trying to identify these documents, and I don't know how else to do it.

By the Court: I have ruled that that is imma-

1007 terial and doesn't belong to this issue, and you understand it and everybody else in this courtroom understands.

By Mr. Freeman: I understand it perfectly.

By the Court: Repeating it is to prejudice the jury.

By Mr. Freeman: It is not so, and I think that remark is not fair.

By the Court: Objection sustained. That part may be stricken.

By Mr. Freeman: I have no desire to prejudice this jury, but I do feel I have a right to make, to attempt to make a record here, and the only way I can make a record is to identify documents with this witness.

By the Court: I have no objection to having the witness identify the documents.

By Mr. Freeman: You ask me to identify them in a vacuum and then you declare they are immaterial because I haven't identified them.

By the Court: Objection sustained. You may proceed.

1008 (Thereupon the said document was marked Plaintiff's Exhibit 46 for identification.)

By Mr. Thompson: If the Court please, counsel obviously knows that all he needs to do is mark them with a number and then they are identified.

By the Court: That is correct.

By Mr. Freeman: Thank you very much, Mr. Thompson. I ask that this document, which is a purchase order No. 949, dated April 12, 1955, from Lashara Cartage Company be marked for the purpose of identification Plaintiff's Exhibit No. 47.

(Thereupon the said document was marked Plaintiff's Exhibit 47 for identification.)

By the Court: That is prejudicial, a purchase order from this company. Objection sustained.

By Mr. Freeman: From Lasham Cartage? What is prejudicial about it?

By the Court: It hasn't any bearing on this issue.

1009 Objection sustained. It may be stricken.

By Mr. Freeman: What is prejudicial about a purchase order?

By the Court: Because you tell them in substance what it is.

1010 By Mr. Freeman: I tell them it is a purchase order of the Lasham Cartage Company.

By the Court: For the trucks that I have ruled out.

By Mr. Freeman: You have ruled out?

By the Court: I have just ruled on the very same thing. I am not talking about the document, but the subject matter, the area.

By Mr. Freeman: I haven't even gone into that. I just asked to have this document marked as Plaintiff's Exhibit 47 for identification.

By Mr. McConnell: I want to note an exception to the Court's statement, where he is simply describing documents and having them marked, which we have done often, Judge Thompson and I and every lawyer in this court room have done for years and years, his statement that it is prejudicial and I except to that statement to the jury.

I don't know how we can get a trial before the jury if you tell them that everything we do is prejudicial.

1011 By the Court: I am not concerned with what you think. You make your offers, and I will make my rulings on the objections, and I want no bickering. If I am wrong, I will be reversed by the Court of Appeals. Mr. Freeman can do it on his own when he is examining a witness.

By Mr. Freeman: We are not interested in the Court of Appeals at this point. We are interested in this jury.

By the Court: So am I interested in the jury, vitally interested.

By Mr. Freeman: I ask that this two-page document dated April 12, 1955 from the Lasham Cartage Company be marked for the purpose of identification as Plaintiff's Exhibit 48, for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 48 for identification.)

By Mr. Freeman: I ask that this document addressed to the Lasham Cartage Company from a point down in
1012 southern Illinois and dated April 14, 1955 be marked as Plaintiff's Exhibit 49 for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 49 for identification.)

By Mr. Freeman: And this document, dated June 8, 1955 similarly addressed and from the same general location in the State be marked as Plaintiff's Exhibit No. 50 for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 50 for identification.)

By Mr. Freeman:

Q. Mr. Monaco, I show you Plaintiff's Exhibits 45 and 46 for identification. Are these inquiries, requests for quotations that you prepared on behalf of the Lasham Cartage Company?

A. Yes, sir.

Q. And do they bear your signature, both of these documents?

A. Yes, sir.

1013 Q. And were they prepared in the regular and ordinary course of your business?

A. Yes, sir.

By Mr. Freeman: I ask that Plaintiff's Exhibits 45 and 46 be admitted in evidence.

By Mr. Meserow: Objection.

By Mr. Thompson: We object to them as immaterial—

By the Court: Louder, please?

By Mr. Thompson: We object to them as immaterial to the issue.

By the Court: Objection sustained.

By Mr. Freeman:

Q. I ask you, Mr. Monaco, if this exhibit which has been identified as Plaintiff's Exhibit 47 is a purchase order of the Lasham Cartage Company, No. 949, dated April 12, 1955?

A. Yes, sir.

Q. And does it involve the purchase of International Harvester tractors?

By Mr. Thompson: We object to that.

By the Court: Objection sustained.

By Mr. Thompson: Mr. Freeman, you know better. That is terrible.

1014 By Mr. Freeman: I do know better, very much better.

By the Court: I don't want arguing between counsel.

By Mr. Freeman: Will the Court tell me to whom that remark was addressed?

By the Court: Both counsel, not to one. I don't want counsel to be arguing with each other.

By Mr. Freeman: Thank you.

I offer Plaintiff's Exhibit 47 in evidence.

By Mr. Meserow: Same objection.

By Mr. Thompson: Same objection.

By the Court: Same ruling.

1015 By Mr. Freeman:

Q. Mr. Monaco, I ask you if you can identify the signature of the vice president of your company, Mr. R. G. Newman, as it appears on Plaintiff's Exhibit 48 for identification? Is that his signature?

A. Identify his signature?

Q. Is that his signature?

A. I don't know if it is his signature or not. I know my own.

Q. Do you know his signature?

A. I don't know if it is his signature or not.

Q. You cannot identify it?

A. Well, it probably is. I can't identify somebody else's signature, I don't think.

Q. All right. Let me ask you, Mr. Monaco, have you ever received any communications from Mr. R. G. Newman during the course of your engagement?

A. Yes.

Q. How long have you been engaged at the Lasham Cartage Company?

A. I have been with Lasham Cartage for eighteen years.

Q. Have you had frequent communications with
1016 Mr. Newman?

A. Yes, sir.

Q. Has he signed his communications from time to time?

A. Yes, sir.

Q. I ask you to look at the signature on Plaintiff's Exhibit 40, and tell me whether that is his signature?

A. Well, it appears to be his signature. It is the way he writes it, but I am not going to say that it is or not. I don't know whether it is his or not. It appears like his signature as far as I can see.

By the Court: I will not exclude it for lack of identification. I think that is sufficient.

By Mr. Freeman: Thank you, your Honor, I offer in evidence Plaintiff's Exhibit 48.

By Mr. Meserow: Objection.

By Mr. Thompson: Same objection.

By the Court: Objection will be sustained on the ground that it is immaterial to this issue.

By Mr. Freeman:

Q. Now, Mr. Monaco, I show you Plaintiff's Ex-
1017 hibit 49 for identification, which is a letter addressed to the Lasham Cartage Company, Chicago offices,

dated April 14, 1955, from a mysterious stranger. Did you receive that?

By Mr. Keating: Objection to the comment of counsel.

By Mr. Thompson: If the Court please, I object—

By the Court: Objection sustained. The remark may be stricken. The jury is instructed to disregard it.

By Mr. Freeman:

Q. What is your answer, Mr. Monaco?

A. I don't know whether they want me to answer it or not.

By the Court: Yes, please. If you can answer it, you may.

By Mr. Thompson: Well, I am sure I don't know what the question is.

By the Court: If the witness doesn't understand—

By Mr. Freeman: The witness knows the question.

By the Court: If you don't know the question, say so, and I will have it repeated to you.

By Mr. Thompson: Of course, it has that erroneous and improper statement in the question. I don't know how much of it is stricken. I don't know what the witness has in mind. I am sure I wouldn't know how to answer it at this stage.

By Mr. Freeman: I haven't asked you to answer it, Mr. Thompson.

By the Court: Mr. Witness, do you understand the question?

By the Witness: Well, he wants to know if I received this letter.

By the Court: That is right.

By the Witness:

A. I don't know whether I have or not, because it isn't addressed to me.

By the Court: All right. That is the answer.

By Mr. Freeman:

Q. Who is it addressed to?

By Mr. Thompson: I object to that.

1019 By the Court: Objection sustained.

By the Witness:

A. It probably was, maybe I did get it, but it isn't addressed to me—

By Mr. Thompson: Mr. Witness, please.

By Mr. Freeman:

Q. Was this addressed to your office in Chicago, the Lasham Cartage Company?

A. It states so, yes, sir. This states 2601 Archer Avenue.

Q. Are you in charge of your offices in Chicago, the district manager?

A. No, I have a vice president also.

Q. Who is your vice president?

A. At the moment it is R. E. Jordan.

Q. Who was vice president in 1955 when this letter was received?

A. I believe it was R. A. Williams.

Q. Were you district manager in April 1955?

1020 By the Court: For the sake of the record and for brevity and to save time, at this time I am not going to exclude the document on any technicalities as to who received it. If any objection is made as to its irrelevancy to this issue, that is the only ruling I am going to make.

By Mr. Thompson: We so object, if he is offering it.

By the Court: He hasn't offered it yet.

By Mr. Freman: I will offer it in a minute.

By Mr. Freeman:

Q. Would your answers to Exhibit 50 for identification be the same with respect to this communication to, in this instance, United States Freight Company?

A. I woul dsay so because it isn't addressed to me. I mean, I don't know whether I have seen them or not. I couldn't say.

By Mr. Freeman: I understand. I understand.

I offer in evidence Plaintiff's Exhibits 49 and 50.

By Mr. Meserow: Objection.

By Mr. Thompson: Same objection, that they are immaterial.

1021 By the Court: Same ruling. They will be excluded.

By Mr. Freeman:

Q. Now, Mr. Monaco, were you directed by your president in New York as to whom to place this order for 30 tractors?

By Mr. Meserow: Objection.

By Mr. Thompson: Objection.

By the Court: Objection sustained. The question may be stricken and he needn't answer.

By Mr. Freeman: I want to establish the foundation so I can make an offer of proof. I don't know what—

By the Court: The witness is on the stand. You can make any offer on that subject you wish, but you can't do it by questions to cover the subject.

By Mr. Freeman: All right.

By Mr. Freeman:

Q. Mr. Monaco, there was an order placed for 30 tractors involved in these papers. Was that the first and only order you ever placed with that organization?

By Mr. Meserow: I object.

1022 By Mr. Thompson: Objection.

By the Court: Objection sustained. He needn't answer.

By Mr. Thompson: I ask that this line of questions—

By Mr. Freeman: I have nothing further of Mr. Monaco.

(Witness excused.)

By Mr. Freeman: Will you excuse the jury so I can go forward?

By the Court: All right, folks. This may take a little longer than you expect, so you can settle down and relax.

By Mr. Freeman: I really think I will be the rest of the afternoon.

By the Court: It is Friday afternoon. Let me talk to the jury for a moment.

1023 You understand this is your last day of the jury, am I right? Be seated, please. I am speaking for the lawyers and for the litigants, and for myself, all of us.

We regret the need for holding you over. I am sure that I have the statements for both sides that they are cooperating to make it as short as they can. They tell me it will not take over a few days, but I am not holding anybody to it. We will do the best we can with it.

If you have any grievances, charge them to me, not to the lawyers. I have broad shoulders, and I hope you have a nice week end, and go out and have a good time. Please don't discuss the case with anyone, not even among yourselves.

I don't want to keep you here for two hours and then put you on a half hour. Ten o'clock here in the coop Monday.

(The following proceedings were thereupon had outside the presence and hearing of the jury:)

By the Court: We will take a five-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1024 By Mr. Thompson: Your Honor, for the benefit of the persons who have been called here as witnesses, if there are not going to be any more called today—

By the Court: You have no jury, so they may be excused until Monday morning.

By Mr. Thompson: However, they are welcome to stay, if they wish?

By the Court: Yes. All witnesses and all parties in interest may leave, except the lawyers. I have no objection to their staying, the witnesses, but they will not be called because we have no jury. All right.

By Mr. Freeman: Your Honor, pursuant to the foundation that was laid this morning in my examination of Mr. Albert A. Wilbur, if permitted to ask the questions that have been rejected, I would establish through Mr. Wilbur's testimony that he was engaged as a real estate broker for Mr. Hugh W. Cross in 1955; that on June 29 and 30, 1955, Mr. Cross and Mr. Wilbur and a Mr. Deakins, not together, but during those two days, did look at various houses in the Chicago area.

That on June 30, Mr. Cross indicated that he would accept, or that he was interested in a house in Deerfield, Illinois, at 320 Margate Avenue, that he left Washing-
1025 ton, and then on July 1, 1955, he called Mr. Wilbur on the long distance telephone and told him that he wanted to buy the house in Deerfield.

That on July 8 a contract for the purchase of this house was transmitted to Mr. Cross who executed the contract, returned it to the attorney for the seller in Waukegan, a Mr. Diver, and inserted a separate paragraph in the contract that possession was to be given the seller by September 15.

That Mr. Wilbur communicated both with Mr. Hugh W. Cross and with Mr. Clarence Diver and sought to have the transaction closed as promptly as possible.

That on July 19, 1955, Mr. Wilbur advised Mr. Cross by letter that, "As soon as the agreement is signed by Mrs. Erickson," who was the seller of the property, "I", meaning Mr. Wilbur, "am going to take an architect friend of mine over to the house and get his ideas on the approximate cost of providing a room for your maid."

That he, Mr. Diver, was called by Mr. Wilbur several times during the period from July to November, 1955, in an attempt to get the real estate deal closed as promptly as possible, and in a communication of November 14, 1026 he reiterated that desire to clean up the title so that the deal could be closed during that week.

While this letter was written on November 14, on November 16, Mr. Wilbur, representing Mr. Cross, called Mr. Diver and stated that in view of the Senate Committee's investigation with respect to Hugh Cross, that Mr. Cross was more anxious than ever to drop the deal and would gladly forfeit the $4,500 of earnest money already paid.

Mr. Diver told Mr. Wilbur that he could not accept the forfeiture because of an estate problem, that he would enforce the contract by a suit for specific performance unless the deal was culminated.

That the following day, on November 17, Mr. Wilbur called Mr. Diver and pointed out in substance that in view of his insistence upon going through with the deal, he, Mr. Wilbur, the real estate broker, would take the title to the property, would lay out the money, and Mr. Wilbur would testify separately that he had decided to loan the money to Cross who was his friend without any evidence of this loan in the form of a note or other evidence, and without requiring interest.

That the transaction was completed in this manner with Mr. Wilbur first taking the title and then later having the title put into a land trust.

That the conversations between Mr. Wilbur and
1027 Mr. Diver are reported in Plaintiff's Exhibits 43 and 44, which have been rejected.

I would like to establish through Mr. Monaco who appeared here this afternoon—

By Mr. Thompson: Excuse me. You are finished with that point?

By Mr. Freeman: Yes.

By Mr. Thompson: My objection, of course, was previously made before this offer was ever made that it should not even be in the record, as it is obviously outside the issues, and so I not only object to it, but I move to strike all of this offer of proof.

By the Court: Are you through with that subject?

By Mr. Freeman: I am through with that witness.

By the Court: With that subject?

By Mr. Freeman: I can offer it by witnesses.

By the Court: I understand.

By Mr. Freeman: I am through with Mr. Wilbur and the house in so far as Mr. Wilbur is involved.

By the Court: On that part the objection will be sustained and it may be stricken.

By Mr. Thompson: Of course, I should have included in my objection that it is an offer of proof with a lot of conclusions incorporated in the offer which, of course, are not strictly actual.

1028 By Mr. Freeman: I suppose it might be appropriate to offer also in evidence the deposition of Mr. Wilbur. I will, before the end of our offer, I will offer in evidence the depositions that were actually taken of these witnesses under oath.

By the Court: On the same subject.

I will expect you to point out to me something else. If and when that is offered—and you may offer it now for that purpose—the objection will be sustained, and they will not be received because of the reasons already stated.

By Mr. Freeman: I would like to offer the deposition of Mr. Wilbur solely directed to the issue of the house.

By Mr. Meserow: Objection, your Honor.

By the Court: The objection will be sustained on the same ground, not any other ground, but on the ground they are not pertinent to the issue involved before me now.

By Mr. Freeman: And on the basis of the foundation laid this afternoon and the examination of Mr. Frank Monaco—

By Mr. Thompson: Mr. Freeman, I am sorry to interrupt again.

By Mr. Freeman: That is all right.

By Mr. Thompson: I don't think that I went to the
1029 point of objecting to even making an offer of proof on this.

By the Court: Yes, you have.

By Mr. Thompson: No one who has any connection with this case, defendants or otherwise, is connected with this transaction.

1030 By the Court: Judge Thompson, you have made an objection and I let it stand for the record all the way through, that I have a right to disregard their offer—that I can refuse to accept an offer of proof on any issue that is not pertinent to the issue in the case, and I overruled that objection, and I am letting him make it.

By Mr. Freeman: With respect to Mr. Monaco, I would prove through Mr. Frank Monaco that as he testified here, he was district manager of the Lasham Cartage Company in 1955, and that he had made investigation of the equipment requirements for that operation, and that he had recommended in 1954 that they purchase International Harvester tractors.

That the Lasham Cartage Company is an affiliate of the United States Freight Lines, and I will connect up the

United States Freight Lines through other witnesses to demonstrate that the United States Freight Lines was owned, forty-five percent, by the New York Central.

This is not part of Mr. Monaco's testimony, however, that the president of the Lasham Cartage Company, Mr. Neuman, directed Mr. Monaco to place an order for thirty International Harvester tractors with Mr. Hugh E. Cross, who was the son of Hugh Cross, and who had a farm agency of International Harvester in Carrollton, Illinois.

That on January 31, 1955, the National Fleet Sales representative of the International Harvester Company had submitted quotations to Mr. Monaco in Chicago, but on March 11, 1955, as appears from Plaintiff's Exhibits 45 and 46, Mr. Monaco asked Mr. Hugh E. Cross for quotations on a total of twenty-five tractor units, which later became thirty.

That on April 12, 1955, the Lasham Cartage Company placed a purchase order with the Carrollton Farm Supply, attention Hugh Cross, Jr., for thirty International Harvester tractors, and, as shown by Exhibit 48, this order was placed on the basis of an override of $150.00 per unit or a net profit of $4,500, no matter what the cost of the tractors.

That on April 14, 1955, Mr. Hugh E. Cross of the Carrollton Farm Supply Company addressed a letter to the president of the Lasham Cartage Company, signing it "Hugh" saying that he had had—and I will read the letter, which is as follows:

"Regarding our telephone conversation of April 13, 1955, with reference to price increase of truck on your purchase order 949, I confirm that the increase will be upward to $100 per truck on the 162 models and upwards to $150 per truck on the CO-205 models. These prices are listed prices. They are also round

figure prices. Any variation downward will naturally be in your favor and passed along to you accordingly."

That on June 8, 1955, Mr. Hugh E. Cross addressed another letter to the president of the Lasham Cartage Company, this time in New York, and similarly called his attention to the invoice that was due and owing to the Carrollton Supply Company by reason of the purchase of these thirty tractors which were drop-shipped in Springfield, Ohio, Mr. Cross never having handled or seen the tractors at all.

1633 That is all I will present through Mr. Monaco. Other information with respect to this tractor deal will be presented through other witnesses that I will bring to your Honor's attention.

By Mr. Thompson: Objection to the offer of proof.

By the Court: Objection sustained, and it may be stricken.

By Mr. Thompson: And I object to the conclusions and the hearsay contained in the offer of proof.

By the Court: Judge Thompson, I can't do any more than strike it.

By Mr. Freeman: Excuse me?

By the Court: I was talking to Judge Thompson, and I said, "I can't do any more than strike it."

By Mr. Freeman: I want to proceed further with offers of proof of witnesses that have been previously presented, foundational questions having previously been made.

With respect to the testimony of Mr. Fred Gurley, president or former president of the Santa Fe Railroad Company and the president of that railroad in 1955, in response to questions presented to him, which have been rejected, we would establish through Mr. Gurley that early in 1955, prior to June, 1955, Mr. Gurley heard

1634 the statement made in Washington, possibly from a

railroad man, that Cross would become associated with the Keeshin organization if Keeshin succeeded in receiving the transfer contract.

That Mr. Gurley was requested to prepare an affidavit for the Senate investigating committee meeting—which was dealing with that problem in September and October of 1955, and he prepared an affidavit dated November 8, 1955, which has been marked here and rejected as Plaintiff's Exhibit No. 19.

That when this affidavit was received, the Senate Committee sent Mr. Gurley a telegram, which has been marked as Exhibit 20, saying that his affidavit was insufficient and also sending him a subpoena to appear before the committee at its executive session, which has been marked as Exhibit No. 21.

Mr. Gurley would then have testified that to avoid making a public appearance before that Senate Committee, he prepared an affidavit on November 10, 1955, which has been marked as Plaintiff's Exhibit No. 22, which contains the statement that I have previously read with respect to Cross' future association with the Keeshin organization, and Mr. Gurley has testified that that statement was true and correct as contained in the affidavit.

We would further establish, through Mr. Gurley,
1035 that on or about May 26, 1955, he did receive a telegram from Mr. Hugh W. Cross advising Mr. Gurley that Mr. Cross intended to be in Chicago from May 31 to June 2nd and would telephone Mr. Gurley in the hopes that he could have a chat with him.

1036 Further, I would establish through Mr. Gurley that the Santa Fe, the railroad of which he was president, had important cases pending before the Interstate Commerce Commission during this period in 1955, and for a subsequent period after June 1955.

That is all of the offer I would make through Mr. Gurley, Mr. Thompson.

By Mr. Thompson: If the Court please, we will challenge the good faith of this offer of proof, in addition to the other objections that we might make.

Mr. Gurley denied on his pretrial hearing as emphatically as one could deny that he ever received any telegram from Mr. Cross, and his offices there testified that a diligent search failed to disclose any such telegram as having been received.

Also, Mr. Gurley in his affidavit, as will appear from the affidavit, separated two things. He said that early or some time in the spring of 1955, before June 15, we had heard that Mr. Cross was unhappy in Washington, and that he might return to Illinois; and then he says, in his affidavit, subsequent to that time, I heard a rumor,

1037 which I don't know where I heard it, and I have a very hazy recollection of it, a rumor that Mr. Cross might become associated with the Keeshin industry in some fashion.

Anyway, the affidavit separates the two things as to time and event. As far as the telegram is concerned, the evidence is directly contrary to the representation of counsel.

By Mr. Freeman: Your Honor, in the case of Mr. Gurley, particularly, we were not permitted to read his answers to the questions presented in deposition, so I would want to offer in evidence the deposition of Mr. Gurley.

With respect to Mr. Thompson's remark about—

By the Court: You mean on that subject?

By Mr. Freeman: No, Mr. Gurley's entire deposition, I think, deals primarily with this issue that you have described as conspiracy rather than—

By the Court: All I want to be sure is that if there is any subject in those depositions not touching upon this phase of it, I want to rule upon those. I only want to rule upon all or any part of the deposition that belongs in that area.

By Mr. Freeman: I think it is safe to say that aside from the man's name, all of it would pertain to
1038 that area.

By the Court: All right. The deposition will be rejected as this time on the grounds already stated. Even in the light of Judge Thompson's qualifications of your proposed offer, I can only sustain his objection and strike it.

By Mr. Freeman: Yes, and with respect to Mr. Thompson's rather definite remark that this was not a good faith offer and there was a very firm denial, I would for the record specifically call the Court's attention to Mr. Gurley's testimony on Pages 2407 and 2409, where the best he could do was to say he did not recall receiving the telegram.

If there is any problem about the telegram, we will get another witness in Mr. Gurley's organization to discuss that.

May I also—

By Mr. Thompson: If the Court please, again I must challenge the statement.

By Mr. Freeman: This is not part of my offer.

By Mr. Thompson: The question on Page 2407 is:

"I show you a telegram that has been identified as Brennan Exhibit 5, which is a telegram sent by Mr. Cross to Mr. Feucht of the North Western, and
1039 ask you whether you received a telegam similar to that."

The answer is:

"I did not."

By Mr. Freeman: Oh, yes. Well, of course, we will establish through Mr. Cross that he did send the telegram, and we do have evidence of it anyhow, and Page 2409—

By the Court: I think the offer is complete.

By Mr. Thompson: 2409 says the same thing.

By the Court: I think the offer is complete. You have offered the entire deposition. I have ruled it out. So whatever is in it is part of your offer.

1040 By Mr. Owens: Your Honor, with respect to all of these objections, I would like the record to show that on behalf of Hugh Cross, we are making similar objections and joining in the objections made by Mr. Thompson.

By the Court: They are stricken from the record for all intents and purposes.

By Mr. Freeman: I would like to supplement my offer with respect to Mr. Fred Gurley to include establishing through Mr. Gurley that he attended a meeting on May 27 in Washington D. C. of the American Association of Railroads, at which were present Mr. Simpson, Mr. Perlman, Mr. Johnston, and himself.

By the Court: Same objection; same ruling.

By Mr. Freeman: I would establish on the basis of the foundation we have laid in the reading of Mr. Simpson's deposition, and we make an offer of proof through Mr. Simpson's deposition to establish that he, Mr. Simpson, had met Mr. Cross when he became a Commissioner; that Mr. Cross visited Mr. Simpson in Baltimore and inquired about the status of the transfer negotiations in Chicago; that included in his inquiry was also a discussion of the Baltimore and Ohio financing problems;

That one such meeting occurred on April 23 and 1041 was preceded by a long distance call made by Mr. Cross on April 18 to secure an appointment, and

another such meeting occurred on April 8. Although Mr. Simpson denied emphatically that he did meet with Mr. Cross on April 8, his deposition, which I will also offer in evidence at the proper moment, establishes that meeting:

That Mr. Simpson at his first meeting with Mr. Cross said he did not know of any of the details of the transfer negotiations; that he asked his man Whittington to bring him down to date; that he did receive a memorandum from the vice-president of that department on April 11, 1955, bearing upon the transfer situation, and this memorandum has been admitted into evidence as Plaintiff's Exhibit 16;

That Mr. Simpson would further testify that Cross made further inquiry of him with respect to the transfer negotiations, and pursuant thereto Simpson secured information from his passenger offices with respect to meetings of the sub-committee and requests for competitive bidding, which information was relayed to Mr. Cross;

That, Mr. Simpson says, and originally testified, he had one telephone conversation that he made to Mr. Cross, or one telephone call that he placed to Mr. Cross, and that telephone call occurred on April 25 or 26; that he denied ever making a second telephone call to Mr. Cross; that he denied ever calling Mr. Cross with respect to the financial problems of the Baltimore and Ohio Railroad;

That he accused the interrogators of having a "hell of a bad memory" but it developed during the course of the deposition that he had called Mr. Cross a second time on September 7, 1955; that he did make inquiry about the Baltimore and Ohio financial problems;

That Mr. Cross was on vacation in Charlevoix, Michigan at the time, and hurried back to Washington to have a

meeting with Mr. Simpson on September 8, the very following day;

That with respect to the April 11th memorandum that had been prepared and transmitted to Mr. Simpson, which has been admitted into evidence as Plaintiff's Exhibit 16, Mr. Simpson would testify that he read the memorandum within a few days of its date; that it is a very detailed memorandum and contains full information with respect to the appointment of a sub-committee to study the matter and request for competitive bidding, but that this

1043 information, Mr. Simpson regarded as not sufficiently up to date to turn over to someone of the status of Commissioner Cross; that no other memorandum on the transfer issue existed in the Simpson file, and the original copy of this memorandum of April 11 could not be located and was believed mislaid;

Mr. Simpson denied he gave the memorandum to Mr. Cross.

1044 We would further establish through Mr. Simpson that Mr. Cross called Mr. Simpson repeatedly; that he called him on May 13, May 20, May 25, in New York, and June 8;

That Mr. Simpson would testify that in every instance of a call from Mr. Cross, Mr. Cross brought up the subject of the transfer negotiations;

That in his call on May 25, which was after the committee meeting of May 19, Mr. Cross called to be brought down to date on the transfer negotiations;

That in these conversations Mr. Cross did the talking and Mr. Simpson listened, that he was told with respect to transfer negotiations;

That Mr. Simpson did not receive telephone calls from any other commissioners.

With respect to the Baltimore and Ohio financing pro-

gram, Mr. Simpson would testify that this financing program was before the Interstate Commerce Commission from the fall of 1954 to the spring of 1956, with various procedural problems involved;

That Mr. Cross, early in 1955, was a member of the Interstate Commerce Commission's finance division, which was Division IV; that Mr. Simpson could not recall 1045 whether Mr. Cross had any connection with these financial dockets;

That the Baltimore and Ohio financing involved the largest railroad financing operation in history. Approximately $300,000,000 in bonds were refinanced, and the Baltimore and Ohio Railroad realized annual savings in interest of three and a half million to four million dollars;

That the Interstate Commerce Commission performs regulatory functions in the case of security issues; that the Commission must determine whether the securities that are proposed are consistent with the public interest; that the timing of the Commission's approvals are important in connection with the underwriting;

That on June 8, Cross called Mr. Simpson to advise Mr. Simpson that Keeshin had been awarded the contract, and that Cross inquired about developments a couple of times later. This is supported by an affidavit of Mr. Simpson that is marked as Plaintiff's Exhibit 14, but which has been rejected.

That Mr. Simpson had asked Mr. Whittington to bring him up to date and had received the April 11 memorandum in consequence; that his principal interest in the transfer negotiations was to hold the cost of the 1046 transfer down;

That a second inquiry was made to Mr. Whittington about the transfer negotiations about May 25;

That Mr. Simpson claims that he does not recall the

nature of Mr. Whittington's reports after his trip to Chicago;

That Mr. Simpson had a meeting with the eastern railroad presidents conference in New York on April 21, at which was present Mr. Simpson, Mr. Perlman and Mr. Symes of the Pennsylvania Railroad;

That on April 21, Mr. Simpson attended a dinner at the New York Railroad Club in New York City at which Mr. Cross was the principal speaker.

On April 29, Mr. Simpson's diary reveals that he had a breakfast meeting in a railroad car of President Touhy of the Chesapeake and Ohio, at which was present Mr. Perlman as well as other railroad president defendants here.

On April 29, he attended a board of directors meeting in Washington, D. C., of the American Association of Railroads, and there was present at that meeting besides Mr. Simpson, Mr. Perlman of the New York Central, Mr. Symes of the Pennsylvania, Mr. Johnston, Wayne Johnston of the Illinois Central, and Mr. Fred Gurley of the Santa Fe Railroad;

That on May 4th he attended a meeting in the Pierre Hotel in New York City, and his diary and his secretary's diary, which have both been marked as Plaintiff's Exhibits 17 and 18 and rejected, contains a notation, "See President Perlman after the meeting."

On May 19, he attended an eastern railroad presidents' conference in New York, at which Mr. Perlman of the New York Central and Mr. Symes of the Pennsylvania were present.

On May 27, he attended a breakfast meeting in Washington, D. C., in his own railroad car, at which President Perlman and Symes as well as others were present, as indicated by their diaries;

That on May 27 he attended a meeting of the American Association of Railroads in Washington, at which were present Mr. Perlman, Mr. Symes, Mr. Johnston and Mr. Gurley.

This is all that I would establish through the Simpson deposition.

1048 By Mr. Thompson: We object to the form and the content of the offer.

We object to the form in that it contains a lot of conclusions and argument which are not proper in an offer of proof.

We object to making a statement with the witness not on the stand, of things that he proposes to prove which are not within the content of the witness' testimony by deposition, which is available, so that all he can offer, if he is making an offer of proof properly under any circumstances would have to be confined to the deposition.

Our objection, of course, stands to the offer in all these respects.

By Mr. Freeman: My offer, of course, goes to this point: That if the questions that were presented to Mr. Simpson in the deposition were permitted to be answered, this would be his answer. Of course, I offer the deposition of Mr. Simpson to support it.

By the Court: Same qualification on the deposition, Mr. Freeman, that you are not offering anything except on this area? I mean, I don't want to blindly exclude anything in the deposition.

By Mr. Freeman: Would you then just exclude those things except that Mr. Simpson did testify that his

1049 —I don't know whether he used the word "principal,"

—that his sole interest was—

By the Court: Let's put it this way: I will even take a wider blanket than that. Anything independent of this area may not be considered by me in the exclusion. I am

only excluding anything that pertains to this excluded area, and objection will be sustained and it will be stricken.

By Mr. Freeman: The principal point I want to preserve, as I recall the deposition—

By the Court: I am preserving it for you unreservedly except on this area.

By Mr. Freeman: You have done that, but just let me note here that Mr. Simpson did state under oath that his interest in the Chicago transfer negotiations was primarily economic to secure the lowest possible cost. That, I believe, should be preserved.

By the Court: I have no objection.

By Mr. Freeman: Now I have been asked about Mr. Cross. I was going to make an offer of proof as to Mr. Cross. Is he still here?

By Mr. Owens: He has left for the day.

By Mr. Freeman: You wanted me to make the offer while he was here?

By the Court: He doesn't have to be here on the 1050 offer of proof.

By Mr. Owens: I told you at the time that he had left.

By the Court: I don't understand why you want him here.

By Mr. Freeman: I am willing to accommodate counsel—

By the Court: I am talking to counsel. I am not talking to you.

By Mr. Owens: You put him on before, you laid the foundation, and you withdrew him and said you would make an offer of proof. I am not agreeing that you should make an offer of proof.

By Mr. Freeman: I misunderstood. I thought you wanted me to withhold my offer of proof.

By Mr. Owens: No. I thought perhaps you wanted to examine him further before you launched into this.

By the Court: No, I excused him and all the witnesses.

By Mr. Thompson: I think as far as the other defendants are concerned, the statute contemplates, of course, that the witness be on the stand so you can challenge the good faith of an offer, if he goes out of line and says he is going to testify to something that he wouldn't teestify to.

By Mr. Freeman: This good faith challange has been made a lot. I would like very much to have the wit-
1051 ness testify.

By the Court: I don't understand that, Judge. Will you repeat that?

By Mr. Thompson: I say, the statute provides that the offer of proof should be made with the witness on the stand, and when and if there is an offer made that he will testify thus and so, and it is not true, the witness is here to refute it, of course.

By Mr. Freeman: I would like to see that rule.

By the Court: I would like to see that rule, too. I don't follow it. I don't question it, Judge, but I don't know anything about it.

In any event, we have gone beyond that point. We have all agreed, at least, that we are going to offer the proof; that we qualified the witness by his being on the stand. He asked him some questions, I sustained the objections, and now they make an offer of proof. His counsel may make any objection, as you did on Mr. Gurley, to what you considered was not truthful. He may get up and make the same statement to the Court, and I will pass upon it.

1052 By Mr. Thompson: Well, of course, the deposition is here and they can make their offer of proof from the deposition.

Of course, this narrative, oratorical offer of proof is contrary to all the rules on making an offer of proof, drawing conclusions, filling in the gaps.

By the Court: I have spent a half a day on the offer of proof law this week. I believe it is within the sound discretion of the Court, and only on abuse of discretion would be considered and reviewed by the Court of Appeals.

I think it is fair to have you make the offer of proof on the theories already outlined before. You make them, and if counsel for Mr. Cross wants to challenge the veracity of it, he may make his statement for the record. I am excluding it, not on the style of the offer or—

By Mr. Freeman: The form.

By the Court: Or the form of the offer, but on the one issue. It hasn't any place on this before the jury.

By Mr. Freeman: I just want to make it clear to your Honor that I have not interpolated except where I have specifically mentioned it, and I have not 1053 drawn any conclusions.

By the Court: You haven't. You are within your bounds.

By Mr. Freeman: And I have tried to use the language of the witness in the depositions.

By the Court: Even if you are exceeding the limitations in the offer of proof, the jury is not in the box, and you are reasonably within your bounds and can be challenged by his lawyer. Proceed.

By Mr. Freeman: I would offer to prove through the testimony of Mr. Hugh W. Cross, as he has already testified, that he was appointed Commissioner in April 1949; that he was reappointed in 1951 for a full term ending December 31, 1957;

That in 1955, he was a Commissioner to June 30, and then became Chairman of the Commission on July 1, 1955—

By the Court: Do you want a few minutes time to rest?

By Mr. Freeman: I am all right.

By the Court: You tell me when, and I will recess for five or ten minutes.

By Mr. Freeman: I think I would prefer finishing.

By the Court: All right. Proceed.

1054 By Mr. Freeman: Cross intended to serve out his full term, or at least to serve out his term as chairman;

That the Interstate Commerce Commission, Mr. Cross would testify, has broad powers and general supervision of railroads' rates, service and securities; that there were many matters of great importance involving the six defendant railroads pending before the Interstate Commerce Commission in 1955;

That the chairman is the most important of the Commissioners, and that it is a betrayal of the duty of a commissioner to ask private favors or exert any type of pressure. This is found in the transcript, for your benefit.

That Cross never corresponded with Keeshin; that Cross never visited Keeshin's home except for one visit in the summer of 1955 at Eagle River.

1055 That Keeshin never visited Mr. Cross's home, either in Springfield or in Washington; Mr. Cross previously had never taken any part in any of Mr. Keeshin's business ventures.

That on March 23rd Keeshin called Mr. Cross for an appointment, and they met at the Mayflower Hotel the latter part of March or early April of 1955;

That Mr. Keeshin requested Cross to put in a good word for him with the railroads on the Chicago transfer contract;

That Keeshin asked Cross to help him in securing the transfer contract and to find out the status of negotiations in Chicago;

That there were many long distance telephone calls back and forth between Mr. Cross and Mr. Keeshin concerning the Chicago transfer matter.

That Mr. Keeshin described his proposal to the railroads, to Mr. Cross, and discussed his letter of April 6th, which we will offer later, and told of the progress or lack of progress he was experiencing.

That Mr. Cross was advised of the six railroads on the committee and of the meeting in May. That Cross had talked with railroad presidents, including Mr.
1056 Simpson, Mr. Feucht and Mr. Johnston, and reported the results of these talks with Mr. Simpson and Mr. Feucht to Mr. Keeshin.

That when Mr. Keeshin secured the transfer contract, he called to express appreciation for Cross' help; that Cross in turn called Mr. Simpson and Mr. Capri of the Pennsylvania on June 8 to express his appreciation for their help or, as he said it, Mr. Cross, to say that they had done a good thing in selecting Keeshin.

That after the award of the contract by the railroads he discussed various procedural problems with Mr. Keeshin's attorney, Mr. Goldstein.

That the first contact made by Mr. Cross was with the Baltimore and Ohio Railroad. That he called Mr. Simpson in Baltimore while he was in Baltimore getting a suit at Swarz, but that he found that the tailor was very busy getting out his Easter work, and so he had to get a suit later, that Easter fell on April 10 in 1955.

At this meeting with Mr. Simpson in Baltimore, Mr. Cross made inquiry of the status of the transfer matter, and Simpson stated to Mr. Cross that he did not know anything about it but would inquire and let Cross know.

That in addition to the discussion of the transfer
1057 matter, Cross also discussed with Simpson the Baltimore and Ohio financing which was probably the

biggest financing that any railroad had ever undertaken, Mr. Cross would testify.

He also would say that this financing overshadowed, in his words, everything else, and the Commission still had to take care of a great many details.

That the financing involved the issuance of some three hundred fifty million dollars' worth of railroad securities and resulted in a savings to the Baltimore and Ohio of interest costs of approximately three million dollars per year.

That the Commission had an obligation to protect the public interest in securities presented to it for its approval.

The merits of the issue must go analyzed. Among other problems the question of exemption from competitive bidding, the reasonableness of the interest rates and terms; the prospective proportion of debt and equity securities, the timing of the Commission's approval so that they coincide with underriding requirements of problems involved.

Cross discussed the transfer matter with Simpson on several occasions and inquired about it in phone conservations.

1058 Cross called Simpson on April 18 and asked for for an appointment, which he kept on April 23rd, a Saturday, in Baltimore, Maryland.

Cross also called Simpson on May 13, the same day that he called Mr. Feucht, and thereafter on May 25th Cross called Simpson to find out what were the reactions of the committee that had met on May 19th.

Finally, on June 8 Mr. Cross called Simpson to express his appreciation, and, as he put it, to advise Mr. Simpson that Cross felt that the railroads had done a good thing by selecting Keeshin.

That with respect to Mr. Capri of the Pennsylvania Railroad, Mr. Cross would testify that Capri came to his office several times during the spring and summer of 1955, and Cross called Carpi on the long distance telephone several times and may have discussed this transfer situation with him.

He called Carpi on April 18 to arrange an appointment in Philadelphia. He also called Carpi on April 26, May 12 and June 8. Mr. Carpi called Cross on the long distance telephone during this period.

That with respect to Mr. Cross' contact with the 1059 western railroads Mr. Cross called Feucht on May 13 and said he was very much interested in seeing that Keeshin got the transfer contract. Mr. Cross has admitted that any such expression would be the application of official pressure on the railroads.

On April 29, President Johnston of the Illinois Central came to his office in Washington, while he was there for an AAR meeting, and asked Cross about his purported intention to take a job with Keeshin if Keeshin got the transfer contract.

Mr. Cross discussed the Keeshin negotiations for the Chicago transfer contract with Mr. Wayne Johnston on more than one occasion. Mr. Cross would testify, however, that the meeting with Mr. Wayne Johnston occurred some time in July of 1955; that Mr. Johnston had told Mr. Cross that his friend Keeshin should go out and get the airporter service in Chicago, because the railroads were losing business, and the airlines were coming into prominence.

In conection with that he facetiously said to Mr. Cross, "Why don't you get your friend Keeshin to give you a job with the combined company?"

That on May 25 Cross discovered that the three 1060 western railroads had expresed a preference for Parmelee and, accordingly, sent three telegrams to

the presidents of each of the three railroads, namely, Mr. Gurley of the Santa Fe, Mr. Wayne Johnston of the Illinois Central, and Mr. Feucht of the North Western.

These telegrams advised the receiver that Mr. Cross expected to be in Chicago from May 31 to June 2nd at which time he would call and hoped he might have a short chat.

On May 26 Mr. Cross left Washington and went to Jerseyville for the Decoration weekend and arrived in Chicago the evening of May 31 at 10:50 p.m., and registered at the Union League Club.

Mr. Cross explains that the telegrams were sent because there was to be a bell ceremony in Washington, D.C., at which they were to dedicate an old steam locomotive bell, and that since Mr. Cross was invited to that ceremony, as well as several other friends of his, that he sent these telegrams to advise his friends that he would not be present at the bell ceremony.

1061 Mr. Cross would also testify, however, that the bell ceremony was May 26, while the telegrams provide for his presence in Chicago May 31st to June the 2nd.

I would like to have marked for the purpose of identification as—and I would offer it through Mr. Cross—this registration at the Union League Club of Hugh Cross from May 31 to June 3, 1955; and I would like to have this marked as Plaintiff's Exhibit No. 51, for identification.

(Thereupon said document was marked Plaintiff's Exhibit No. 51 for identification.)

By Mr. Owens: I am objecting, of course.

By Mr. Freeman: I will offer them all at once. Let me mark them.

Mr. Cross would testify, if permitted, that the signature on the registration card which has been identified as Plaintiff's Exhibit 51 is his signature, and that he was at the Union League Club for the period of time there involved.

That on June 1, 1955 Mr. Cross tried to call President Feucht at the North Western Railroad at 9:00 o'clock a.m., but he did not find him in and instead left his telephone number; that on June 2nd, Nye Morehouse
1062 called Mr. Cross and said he wanted to come over to talk to him for a short while and renew acquaintances; that Mr. Morehouse came over to the Union League Club and met in Mr. Cross' bedroom and discussed the transcontinental class rate cases, which, Mr. Cross testified, were very controversial matters pending before the Interstate Commerce Commission.

That Mr. Cross visited President Johnston of the Illinois Central in Chicago on the afternoon of either June 1st or June 2nd.

That Mr. Cross met with Mr. Keeshin on June 1st and had lunch with him at the Union League Club; that all of Mr. Cross' long distance telephone calls, either to Mr. Keeshin or to Mr. Simpson or to Mr. Carpi or to Mr. Feucht of the North Western, and all of the telegrams that he sent, were charged to his home phone, and all of his travels to Baltimore, Philadelphia and Chicago were paid for by himself, since they involved personal matters and not official business.

That the telephone calls at the Interstate Commerce Commission were placed by Cross himself; that by not charging calls to the Interstate Commerce Commission, Cross did not have to certify that they were on
1063 official business, and no records of calls would be maintained.

That Mr. Cross, however, testified that the reason he

charged these telephone calls and telegrams to his home phone was because the money at the Interstate Commerce Commission was running short, and there was a very firm policy that either the calls were to be made collect or were to be absorbed by the employee or Commissioner himself.

That Cross denies that he received an offer from Keeshin to become associated with the Keeshin company in the event that Keeshin were to secure the transfer contract and says, "I deny this, because there was no definite commitment."

That on June 29 Cross came to Chicago and registered at the Union League Club, and he would identify his registration from June 28 to June 30, 1955; and I will mark this registration slip as Plaintiff's Exhibit No. 52.

(Thereupon said document was marked Plaintiff's Exhibit No. 52 for identification.)

That he did come to Chicago for the purpose of looking for a house in the Chicago area in which he could live; that he called his wife with respect to this house
1064 from Chicago on June 30th; that he called his real estate broker, Mr. Wilbur, from Washington,
D.C. on July 1 and advised him that he would buy the house.

1065 That he received the contract of purchase of this house in a communication under date of July 8, 1955, and I want to identify this transmittal letter of Plaintiff's Exhibit No. 53, a letter from Clarence W. Diver to Mr. Hugh W. Cross, dated July 8, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 53 for identification.)

That Mr. Cross returned the contract of purchase under date of July 10, 1955, and in his letter of trans-

mittal enclosing two copies, Mr. Cross pointed out, "Please treat this matter in confidence and withhold the use of my name."

I would like to have this letter marked, for the purpose of identification, as Plaintiff's Exhibit No. 54. It consists of a handwritten letter from Hugh W. Cross to Mr. Diver dated July 10, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 54 for identification.)

I might say to your Honor in this connection our proof with respect to the house goes beyond the deposition, because the witness was directed not to answer
1066 any questions. This proof would be made by the witness in person.

I want to also mark for the purpose of identification as Plaintiff's Exhibit No. 55, this four-page articles of agreement dated July 11, 1955, and signed by Hugh W. Cross, his wife Helen M. Cross and the seller, Margaret K. Erickson.

(Thereupon the said document was marked Plaintiff's Exhibit No. 55 for identification.)

That Mr. Cross would testify when he received these articles of agreement he inserted a new paragraph, 4-A, reading as follows:

"Possession to be given the buyer on September 15, 1955."

That was with the notation that this was inserted before signing his initials and his wife's initials, and Mrs. Erickson's initials, and Mr. Cross would testify he had called Mrs. Erickson in order to make this arrangement before he was willing to sign the agreement.

I would also like to have marked for the purpose of identification as Plaintiff's Exhibit No. 56, this exclusive

listing, both the front and the back of the card of 1067 the card of a house in North Sumner, Maryland.

(Thereupon the said document was marked Plaintiff's Exhibit No. 56 for identification.)

That Exhibit 56 would be identified by Mr. Cross as containing his signature and providing for an exclusive listing on July 11, 1955, the same date as the execution of the articles of agreement for the purchase of the Deerfield house, an exclusive listing of his home in Maryland at 4924 Fort Sumner Drive.

This exclusive listing lists Mr. Cross' home telephone number as OLiver 2-6019.

That Mr. Cross would testify that he had instructed Mr. Wilbur some time in July to secure an architect and go out to this home, to this house in Deerfield that he had executed an agreement of purchase on in order to design a room for a maid for Mr. and Mrs. Cross.

That he visited Chicago in August, 1955, with his wife, in order to review and inspect the house that he had agreed to purchase.

That he wrote a letter to Mr. Diver on July 24, advising Mr. Diver that he intended to be in Chicago about August 7 to 10 and "spend some time at the house 1068 that I bargained for so hurridely."

I ask that this letter, which is in Mr. Cross' handwriting, dated July 24, 1955, be marked for the purpose of identification as Plaintiff's Exhibit No. 57.

(Thereupon the said document was marked Plaintiff's Exhibit No. 57 for identification.)

That pursuant to this notification, Mr. Cross did come to Chicago with his wife and registered at the Union League Club as Hugh W. Cross and Mrs. Cross, registered in on August 7 at 4:57 p.m. and stayed until August

11 at 7:43 a.m. and I ask that this registration card, which would be identified by Mr. Cross as containing his signature, be marked for the purpose of identification as Plaintiff's Exhibit No. 58.

1069 (Thereupon said document was marked as Plaintiff's Exhibit No. 58 for identification.)

By the Court: All these documents may be so marked.

By Mr. Freeman: That Mr. Cross on July 27 sent to Mr. Diver a deposit of $4,500 covering the earnest money payment under the purchase contract for the Deerfield property, and here again the letter of transmittal is written in Mr. Cross' personal handwriting and dated July 27, and I ask that it be identified as Plaintiff's Exhibit No. 59.

By the Court: It may be so identified, and marked.

(Thereupon said document was marked as Plaintiff's Exhibit No. 59 for identification.)

By the Court: Let the record show that all the document's offered in evidence under the offer of proof may be marked for identification.

By Mr. Freeman: That a Senate investigation of Mr. Cross' conduct in connection with the Chicago transfer matter was instituted sometime in the middle of September, and that on November 4, Mr. Cross was served with a subpoena to appear before a Senate Committee on November 15.

That during the months of October and November
1070 Mr. Cross had telephone communications and personal visits with Mr. Morris Forgash, president of the United States Freight Company, and that Mr. Forgash came to Chicago to arrange for the disposition of the Cross house in November, 1955, while Mr. Cross was being subjected to questioning by the Senate Committee.

Mr. Cross would so testify that on November 19 Mr. Cross executed—

By Mr. Thompson: If the Court please—

By Mr. Freeman: Let me finish this sentence.

—that Mr. Cross executed documents transferring his interest in this property to his broker, Mr. Albert A. Wilbur.

I would like to have this November 18 document marked, for the purpose of identification, as Plaintiff's Exhibit No. 60.

(Thereupon said document was marked as Plaintiff's Exhibit No. 60 for identification.)

In that connection, another document also dated November 18, 1955, dealing with personal property, signed by both Mr. Cross and his wife, and I would like to have that marked as Plaintiff's Exhibit No. 61, for identification.

1071 (Thereupon said document was marked as Plaintiff's Exhibit No. 61 for identification.)

By Mr. Thompson: If the Court please we have refrained from interrupting, because we have already made our protest time and time again with respect to this form and character of offer of proof, but we cannot let this pass without interrupting these alleged statements of fact which, so far as we are advised, have no basis in fact, and Mr. Cross will not testify, as far as I have ever heard, that Mr. Forgash came out to Chicago to help him get rid of the house.

I don't know what the premise is for any such assertion to the Court, and to put it into the record is, of course, very prejudicial.

By Mr. Freeman: Do you want me to do it through Forgash, too?

By the Court: Proceed, Judge.

By Mr. Thompson: In addition to that statement, to that misstatement of facts, another one that is strinkingly false and is not made in good faith is that Mr. Cross knew that the three Chicago railroads, through subordinates, had recommended that the contract remain with

Parmelee and there is no evidence of any character
1072 that Mr. Cross knew any such thing.

There are a number of other statements of that character. Our objection is that this farce of making an offer of proof in this form and by this method ought to be stopped.

We are getting into this record, and it doesn't make any difference if the Court strikes it, as it is still there, I assume, and I don't know how you are going to physically eliminate it and not have it in the record that is going up to the court of review, which they keep threatening is where it is going to—

1073 By Mr. Freeman: We are not threatening.

By Mr. Thompson: And that being true, of course, it is there as a statement of an offer of proof. When we object to this offer of proof, I suppose it is a demurrer to the evidence in a fashion. In other words, you tentatively in effect perhaps admit that he is making an honest offer of proof, but we are saying to the Court that if he proved these things it wouldn't make the case; and that isn't the kind of an objection we are making.

We are not demurring to this stuff as being just irrelevant and immaterial, because some of it is relevant and material to some issues, but it is a long speech filled with conclusions and deductions and inferences and innuendoes linked together by argumentative statements of what Mr. Cross would testify to allegedly, and what somebody else might also testify to, as Mr. Freeman has just now said, that he expects to get this from Mr. Forgash.

By Mr. Freeman: No; all of this is from Mr. Cross' testimony.

By Mr. Thompson: Mr. Cross made no such statement, and you know it.

By Mr. Freeman: If you will let me go on, I am
1074 trying to adhere to the facts as they have already been developed.

By Mr. Thompson: All right. Now then, he has said Mr. Cross will make some statements. Mr. Cross has been in the courtroom all week, and Mr. Cross was excused less than a half hour ago so he might go to Jerseyville over the week end, it being unnecessary to have any of the defendants or the witnesses here for the balance of the day.

We didn't know, of course, there was going to be all of this speech made in Mr. Cross' absence, and if they expect to have Mr. Cross testify to these things on Monday when he is called back to the stand, there certainly is gross misconduct to make an offer of proof of what they expect to have Mr. Cross testify to on Monday.

He is going to be here, and he is going to testify, and he is not going to testify to the things they are saying he is, and we think this is so highly prejudicial to the defendants.

If we could put in the proof to meet all of this, we wouldn't have any concern about it at all, because just none of it is so.

When we have this offer and we have to move to strike it out on any old ground, I suppose it could be argued
1075 somewhere that we are demurring to the evidence, that it wouldn't establish the case if it were received. That isn't the basis of our motion at all.

By the Court: If Mr. Cross were called today or Monday or Tuesday or Friday, I would keep it out of the testimony of the defendants as well as the testimony of the plaintiff, and I am the one who is barring it from the

record, and the plaintiff is not demurring to it, I mean the defendants, and they are not bound by any admissions or denials.

It is the Court that is doing it without any demurrer on the plaintiff's, on the defendants' part.

By Mr. Freeman: Mr. Cross—

By the Court: Pardon me. Let me finish, for the record. I do not believe that it is prejudicial to the record. I would like to say at this time that I presume this case will go up either way, plaintiff or defendants, and I am going on that theory.

I am not inviting it, but I presume it is important enough that it will go up, and I am watching the record as
1076 best I know how, and I cannot agree with Judge Thompson that they are in any way bound by it, and if they are I want to make it clear that I am not considering it in any way as not admissible or improper or should not be offered if and when we reach the proper issues.

1077 I am only excluding it as improper, incompetent and immaterial on the issue of public injury, and it is binding on no one, and I am striking it from the record as though it had not been offered, and it can't possibly be, in my judgment, as a matter of law, be effective in any way, and the jury is not in the box.

Again I want to say if and when it does go up, I know Judge Thompson is shaking his head, and I know he is an old timer, and he doesn't agree with me, and I expect no agreement, as I expect to rule as I see it, but if it does go up I want the Court of Appeals to look at the record and to see what I excluded that was improper and not to guess that I excluded something without knowing what it was about.

The objection will be sustained, and the offer will be stricken so far.

Proceed.

By Mr. Freeman: That Mr. Cross will testify and has testified that he did discuss the transfer matter with Mr. Forgash, that he did have telephone calls back and forth, that he doesn't recall receiving advice from Forgas to call

vice-president Carpi of the Pennsylvania and presi-1078 dent Simpson, that he did know that the New York

Central owned 45 per cent of U.S. Freight Company with which Mr. Forgash was associated, that Mr. Cross did testify—

By the Court: I will give you a five-minute recess.

By Mr. Freeman: I will be through in five or ten minutes.

By the Court: All right.

By Mr. Freeman: If you are not tired, I can go on.

By the Court: The lawyers have been here since 2:00 o'clock.

By Mr. Freeman: Maybe I can finish, and then we can recess.

By the Court: All right, you go ahead.

By Mr. Freeman: That Mr. Cross has testified—

By Mr. Thompson: I am tired, but not physically tired.

By the Court: Beg pardon?

By Mr. Thompson: I am tired, but not physically tired.

By the Court: All right.

By Mr. Freeman: That Mr. Cross has testified—

By the Court: I am tired physically, mentally and otherwise.

By Mr. Freeman: I am exuberantly happy and fresh.

1079 By the Court: I don't mean of this case. I mean I have been on the go every minute, every evening, and this morning I had a special function.

Proceed, and I am listening with attention and with due consideration.

1080 By Mr. Freeman: Thank you, your Honor.

That Mr. Cross has testified that he purchased the Deerfield house for his daughter to give her her start when she got married; that his daughter was married in 1954, that in 1955 she lived with her husband in Germany, that she came back to the United States in the summer of 1956 and she moved to Massachusetts.

Mr. Cross further testified that his daughter saw the house in the summer of 1956, and determined to live in the East, so he sold the house; that Cross had moved into this house in Deerfield, Illinois, in December 1955, after having resigned from the Interstate Commerce Commission on November 23, pursuant to the investigation of his conduct by the Senate Investigation Committee, known as the McClellan Committee;

That Mr. Cross resigned—

By Mr. Thompson: If the Court please, there is nothing of the kind.

By Mr. Freeman: (Continuing) That Mr. Cross resigned in order to avoid a public hearing. As a matter of fact, this has been admitted in the pleadings;

That he moved to his house, as I say, in Deer-
1081 field in December 1955, and put it up for sale prior to May 1956, and had agreed to sell it to Mr. M. E. Kline, who was then the coal sales manager of the Pennsylvania Railroad on May 22, 1956, before his daughter even returned from Germany;

That Mr. M. E. Kline gave Cross a deposit of $1,000 as earnest money to seal the deal, and did buy the house in July 1956; that Mr. Cross or his family owned his home in Washington; that he sold it in order to purchase the Deerfield house; that he had a home in Jerseyville which had been owned by his father before him; that his son occupied that house, but paid rent to his father, Hugh W. Cross, for that privilege.

That Mr. Keeshin sought help from Mr. Cross in other projects pending before the Interstate Commerce Commission, including an application for temporary authority submitted by the C. A. Conklin Truck Lines as well as protection against investigations impending with respect to the safety of operation of the Conklin Truck Lines;

That with respect to Mr. Carpi of the Pennsylvania Railroad, Mr. Cross had several telephone calls back and forth in the spring and summer of 1955; that the 1082 transfer subject was mentioned; that he did not recall mentioning Keeshin;

That the calls were charged to his home phone, and that he did visit Mr. Carpi in Philadelphia some time the latter part of April.

That Mr. Cross testified in connection with his visit to Baltimore to see Mr. Simpson that one of his reasons or principal reason for going there was to see the wood paneling and the fine old building in which the Baltimore and Ohio had its headquarters.

That while Mr. Morehouse did come over on June 1st or 2nd to discuss the class rates and division matters, Mr. Cross also testified that he never discussed these matters with anyone because they were highly controversial;

That he knew Mr. Wayne Johnston of the Illinois Central for a great number of years as a personal friend;

That when Keeshin first contacted Cross, he advised Cross that the U. S. Freight Lines, the Lasham Cartage subsidiary, was about to buy thirty International Harvester tractors, and he would arrange to have them bought at the Carrollton Farm Supply agency run by Cross' son;

That arrangements were made for an override of 1083 $150 per tractor or $4,500; that this $4,500 was used as earnest money on the purchase of the Deerfield house—

By Mr. Thompson: Now, do you mean to represent to the Court that Cross is going to testify to that?

By Mr. Freeman: Yes, he is going to so testify.

1084 By Mr. Thompson: How can I stand here and dispute in court room language what is being said now—

By Mr. Freeman: Your Honor, he doesn't have to. Let him give us Cross for a half a day, and we will prove more than that. It is a question of interrogation of a hostile witness. I mean, what I have said to you, your Honor, 98 per cent of everything I said is fortified by the exact language that Mr. Cross has already employed under oath, and with respect to the other 2 per cent, and this is in that category—

By Mr. Thompson: Which is a vicious falsehood.

By Mr. Freeman: We undertake to prove that, and it is not a vicious falsehood.

It was just a plain, ordinary pay-off, and we will prove it, if you give us a chance.

By Mr. Thompson: Just a vicious falsehood with not the slightest, not even a suspicion to base it on, and he is making it as an offer of proof, with a witness available and taken off the stand by him. The witness would be available for him to put these questions to him, and now he is saying that this will be testified to by Mr. Cross with no basis on earth for it.

By Mr. Freeman: Will you let me put the ques-

1085 tions to the witness?

By Mr. Thompson: I will not let you make a speech to the witness and keep silent. You are going to make a vicious speech to the witness just as you are making now,—

By Mr. Freeman: No, I can prove it.

By Mr. Thompson: (Continuing) and ask the witness is it so, and he will deny it vociferously.

By Mr. Freeman: You know it is true.

By Mr. Thompson: I don't know anything about you that is respectable or even that I want to be in the court room with you if I can avoid it.

By Mr. Freeman: You can leave any time.

By Mr. McConnell: I move to strike that out.

By the Court: All right, gentlemen. The jury is not in the box.

Are you through with the offer?

By Mr. Freeman: No, your Honor, but I deeply resent this remark by Mr. Thompson, and I think he should be castigated.

By the Court: I think it is uncalled for to be abusive to any counsel, plaintiff or defendant, and I so request counsel to refrain from doing it.

If it is improper, if it is untruthful, all you have got to say is that the witness will not so testify.

1086 By Mr. Freeman: How does he know?

By the Court: And if and when the issue comes properly before the Court and jury, it will be given all the consideration, but whether Mr. Hugh Cross is in the court room or not, I will not permit him to admit it or deny it.

Proceed with your offer.

By Mr. Freeman: I would say just in part here that we do have documentary evidence with respect to this which we will present in addition as we go along.

By the Court: Counsel, all I can say is this: I am not trying that issue.

By Mr. Freeman: That is right.

By the Court: I have limited the issue. I have explained it. I have repeated it. I have emphasized it. And all I can say is that there is no room in this court room for name-calling, for abuse.

We are just making a complete record for either side to go up on should the occasion present itself, and I don't

believe that any such offer of proof will be considered by the court as proof except in the light of what I excluded. That is all.

By Mr. Freeman: I think the record is clear on the number of instances of abuse that have occurred
1087 against me personally, and it doesn't bother me except that I do feel that I am in a Federal institution which has dignity and is entitled to respect, and I try to give it.

By the Court: I also feel that I am in the same institution, and that I have taken abuse and I have forgotten it. Now let's go on.

By Mr. Freeman: I will continue to try my lawsuit.

By the Court: Proceed.

By Mr. Freeman: Maybe we can take a five minute recess?

By the Court: All right. At least, we may cool off.

(Thereupon a brief recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1088 By the Court: All right, proceed. Do you want to go to 4:30 or 5:00 o'clock?

By Mr. Freeman: I think I will be through by 4:30.

By the Court: It all depends on what you have.

By Mr. Freeman: I will be through with this offer by then.

By the Court: All right, we will recess then because I am pretty tired.

By Mr. Freeman: Thank you. I am, too.

That Mr. Cross did have private conversations at which he expressed personal interest in seeing that Keeshin get the transfer contract with these various presidents, the Baltimore and Ohio, Illinois Central, Chicago and North

Western, and the vice president of the Pennsylvania Railroad, but that after these private conferences he continued to act on cases presented to the Interstate Commerce Commission for decision involving those railroads as well as the other defendant railroads constituting the six defendant railroads;

That Cross was subject to a Senate investigation of his conduct with a view to determining whether there was a possible violation of the conflicts of interest statute;

1089 That he admitted that he had been indiscreet, and that an executive session of this Senate committee occurred on November 15, and he resigned his chairmanship of the Interstate Commerce Commission on November 23 to avoid a public hearing.

I would like to—

By Mr. Thompson: Now, if the Court please, Mr. Cross will never testify to any such thing. We challenge the good faith of every statement he has made since he has returned after the recess.

By Mr. Freeman: Just as an aside, for Mr. Thompson's benefit, this noble individual who is so difficult at times, in Paragraph 33(m) we allege, "On November 23 defendant Cross resigned his position as chairman of the Commission as a result of an investigation of his conduct by the United States Senate Committee on Government Operations, permanent subcommittee on investigations, and prior to the announced institution of public hearings by said subcommittee."

That statement is admitted by these counsel, including the great Mr. Thompson.

We go on in this allegation with a second sentence, "Such resignation was for the purpose of concealing the terms of the conspiracy."

1090 That sentence is denied.

So it isn't really a matter of proof. It is already conceded in this record.

Now, your Honor, I would like to have marked for the purpose of identification as Plaintiff's Exhibit 62, the transcript of hearings before the Senate Subcommittee on Investigations, dated November 15, 1955, and as Plaintiff's Exhibit 63, Pages 28 through 34 of the annual report of that committee, identified as Report No. 1444 of the Senate, 84th Congress, Second Session, dated July 25, 1956.

(Thereupon the said documents were marked Plaintiff's Exhibit No. 62 for identification, and Plaintiff's Exhibit No. 63 for identification.)

By Mr. Freeman: With respect to the identification, I will make an offer of all these documents that have been identified under Mr. Cross from 51 through 63.

With respect to Plaintiff's identified Exhibits 62, I offer this as admissions against interest in the case of Cross from Pages 56 to 81; in the case of defendant Kee-
1091 shin from Pages 27 to 55; in the case of defendant Johnston from Pages 17 to 22; in the case of defendant Feucht from Pages 2 to 17; in the case of defendant Simpson, his affidavit on Page 22; in the case of defendant Gurley, his affidavit on Page 23.

There are materials in this offer and in the admissions therein made which bear upon the circumscribed issue of public injury as you have defined it.

By the Court: You say they have?

By Mr. Freeman: There is testimony dealing with the comparison of Keeshin versus Parmelee.

By the Court: Those items I do not intend to exclude in a blanket exclusion.

By Mr. Freeman: I understand.

By the Court: I want you to reserve the right to offer it to me in proper from subject to objection, and I will consider it.

By Mr. Freeman: Very good.

By the Court: I am only passing at this time upon what you call admissions against interest on the element of conspiracy and as to those I am going to rule. As to the others I haven't had a chance to check them,

but if you will point out to the Court any time
1092 during the proceeding any other documents, if they

are admissible—I don't know the admissibility or impropriety or any phase of it—I will consider it in due time. I don't want it to be included in my exclusion

at this time.

1093 By Mr. Freeman: Very well. I understand your

Honor's ruling and I will bring—

By the Court: That goes to all documents I am passing on because I do not propose to blanket-exclude anything that properly belongs to the issue before me.

All right. Judge Thompson?

Are you through, Mr. Freeman?

By Mr. Freeman: Yes, your Honor, that is all I have on Mr. Cross.

By Mr. Thompson: I just want to call attention to what is already before the Court, and I ought not to be obliged to do it but apparantly, we are.

As to the answer of the defendant, paragraph 33.

"They deny the allegations and each of them of paragraph 33 except as hereinafter stated."

Then coming down to sub-paragraph M,

"They admit that on November 23, 1955, defendant Cross resigned his position with the Interstate Commerce Commission."

Without limiting the denial, they specifically deny that

such resignation was for the purpose of concealing
1094 the non-existing alleged conspiracy.

By Mr. Freeman: That is correct. I interpret it the way I indicated to your Honor.

By Mr. Meserow: If the Court please on behalf of my clients, I want to make an objection to the offer of proof because it is beyond the scope of the issues, and in addition the offer was full of conclusions and falsehoods, charges, and offers were made with respect to my client—

By the Court: Mr. Meserow, when Judge Thompson made the objections on the same grounds, and I sustained the objection and I struck it from the record, I excluded them for all defendants and all purposes on all the grounds.

If you have got a new ground, I will hear it, but we don't want to be—

By Mr. Meserow: I don't want to take your time, but just to point out one falsehood, he said we admitted the allegation of 33-M, and in our answer, the same as Judge Thompson's, we denied it.

By Mr. Freeman: No—well, the same as Judge Thompson, if that is a denial.

By the Court: That goes for Mr. Hugh Cross and Mr. Owens.

By Mr. Owens: Your Honor, I don't recall the 1095 offer of all the documents.

By Mr. Freeman: You are right, Mr. Owens. I think I offered them, but I did it in too casual a way.

I would like to offer in evidence those document that have been previously identified.

By the Court: They may be considered as having been offered in evidence and rejected.

By Mr. Owens: Of course, I also challenge the truth of the numerous statements made in the offer of proof.

By the Court: You second the motion of Judge Thompson?

By Mr. Meserow: He thirds it. I seconded it.

By Mr. Owens: I don't want to limit myself to just

the statements Judge Thompson made. There are many statements which I consider falsehoods, and if the Court would meet me to go through the record and point them out, I could do that, but I would like to make a blanket objection to it.

1096 By the Court: How could I possibly do that, exclude it for the plaintiff and for the defendant? All right.

By Mr. Thompson: All I was going to suggest was at the time you ruled on my motion, he hadn't quite finished that tirade, and I want to have it applied to all of it.

By the Court: All of it has been objected to, sustained and stricken.

By Mr. Freeman: Your Honor, I resent the use of the word "tirade". I would like Mr. Thompson, with all of his dignity and greatness, to be admonished. I feel that I have a standing in this court that equals his in any form.

By the Court: You have a fine standing in this court, and I was going to say that while you have been criticized for exaggerating your client's point of view, I have been equally attacked only for what I think is the law, so we will admonish all of ourselves for being that heated in the matter.

We are trying a lawsuit, and believe me, it is an important lawsuit. I have an important issue involved here. I want to stand by my guns, and I will follow my rulings in the same pattern as I have held all week.

1097 I will finish it that way, and gentlemen, have a nice week end.

By Mr. Freeman: I would like to make a demand on Mr. Keating to bring to this court some time next week Mr. Morris Forgash who was the president of the United States Freight Lines in 1955. This company was

controlled by the New York Central through the Linden Securities Company, a wholly-owned subsidiary, and therefore Mr. Forgash is a managing agent of the New York Central, and I would like to see him produced.

By Mr. Keating: I certainly object to the demand of counsel. I believe even Mr. Freeman stated there was some sort of a stock tie-up of some forty percent—

By Mr. Freeman: Forty-five percent.

By Mr. Keating: In some chain, one of which was Linden Securities, which was a holding company or some investment of the New York Central.

It is my understanding that the New York Central some years ago, in 1955 or 1956, disposed of all of that stock. Obviously, Mr. Forgash is not a managing agent or any kind of an agent of the New York Central, and I resent the implication that he is any kind of an agent.

1098 By Mr. Freeman: I don't know why everybody resents an implication.

You may rule on it as you see it, but the facts are these, and I think Mr. Keating will agree with me.

By the Court: If counsel says he will not produce him, because he is not the agent of the New York Central, and we are on trial, I cannot order him to do anything that he can't, and that is it.

By Mr. Keating: I represent to the Court that I have no control, directly or indirectly, over Mr. Forgash.

By Mr. Freeman: And I take you at your word.

By the Court: I cannot order you to produce him, then. Have a nice week end. Ten-thirty Monday morning.

(Whereupon, a adjournment was taken until Monday, May 2, 1960, at the hour of 10:30 o'clock, a.m.)

1099 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Monday, May 2, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

1100 Present (Continued):

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1101 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury.)

By Mr. Thompson: Your Honor expressed some interest in my objection that the offer of proof that was made at the close of the session on Friday was not made in good faith.

By the Court: I did what? I expressed some interest, you say?

By Mr. Thompson: Yes, in my suggestion, and indicated that you would like to have some authority on the subject of what the course is where an offer is not made in good faith.

In Central Pacific Railroad *v.* California, 162 U.S., 91 —

By the Court: May I have that again, please?

By Mr. Thompson: Central Pacific Railroad *v.* California, 162 U.S., 91, page 117, the Supreme Court of the United States said:

> "Offers of proof must be offers of relevant proof, specific, not so broad as to embrace irrelevant and immaterial matter, and made in good faith."

Another United States Supreme Court case, the Scotland County *v.* Hill, 112 U.S., 183, at 186, the Court dismissed the requirement of good faith, and there it referred to a Tennessee case, a Maryland case, and said:

> "Those cases do undoubtedly hold that error cannot be assigned on such a ruling unless it appears that the offer was made in good faith, and this is in reality all they do decide.
>
> If the trial court has doubt about the good faith of an offer of testimony, it can insist on the production of the witness and upon some attempt to make the proof before it rejects the offer, but if it does reject it and allows a bill of exceptions which shows the offer was actually made and refused, and there is nothing else in the record to indicate bad faith, the appellate court must assume that the proof could have been made and govern itself accordingly."

1103 In the Maryland case, which is Schbach *v.* Hurtt, 47 Maryland 61 at Page 66, which is a case cited by the Supreme Court in 112 U.S., the Maryland Court said:

> "It was not competent for him simply to make an offer of proof which he had no witness to sustain and insist upon the Court deciding the questions which that offer raised, for that would be invoking from the court below and from this court a decision upon a mere moot question. If such a practice were allowed, it would be quite possible for a party without having any witnesses at all to the point, to raise any controverted or difficult question as to the admissibility of evidence which the cause on trial admitted of and obtain a reversal of the judgment against him if the court below should, in the opinion of this court, have ruled erroneously on such a question."

1104 Now we have challenged the good faith of some of these statements that were made here on Friday, and made them specific in that the representation that Mr. Cross would testify if permitted to be examined on the subject to certain representations of fact, and we pointed out that there was no evidence in the depositions before trial to support any such statement, and that we had no knowledge of any inclination on the part of Mr. Cross to make any such statements, and that we had no knowledge that there were any such facts as has been represented here as facts.

Among them, of course, was the representation that the $4,500 profit which Hugh E. Cross or the Carrollton Implement Company made on the truck transaction was the $4,500 which Hugh W. Cross used in making the down payment on the Deerfield property; and the further representation that this was nothing but a pay-off through Forgash.

Of course, there is no such evidence. In fact, the evidence is directly to the contrary, that Mr. Hugh W. Cross had no connection whatsoever with that transaction.

There was also the representation made of other
1105 facts which we pointed out were false, and that Mr. Cross would not testify to any such thing.

We think that is a challenge of the good faith of the offer which puts on the plaintiff the burden of producing the witness and showing that what the attorney said here was true, that Mr. Cross would so testify.

That, of course, is nothing but an offer of proof, and if they make such an offer of proof by examining Mr. Cross instead of standing up here and representing it without a witness on the stand, then it must be made outside the presence of the jury because it was represented here that Cross would be an adverse witness, and that if they had a half a day's time, they would make him admit these things which were represented to be facts.

Of course, you can picture what is going to happen, and we insist that if they do undertake to show the good faith of their offer by examining Mr. Cross that it must be out of the presence of the jury. We don't want the performance of having Mr. Cross called to the stand while the jury is in the box, and then having the jury sent out, which of course just adds insult to injury in the way this proceeding is being conducted in making these offers of proof which have no basis in fact.

1106 Your Honor hasn't ruled that this offer of proof is rejected on the ground of lack of good faith because your Honor has ruled specifically that this offer of proof is rejected because it does not bear on the issue that is before the Court, which of course is thoroughly sound from your Honor's limitation of issues. Conforming to that limitation of the issue would, of course, call for an omission to make any such offers of proof in

violation of the Court's rule because as these cases say here, the Supreme Court said, "Offers of proof must be offers of relevant proof, specific, not so broad as to embrace irrelevant and immaterial matter and made in good faith."

1107 In other words, those are all conditions of an offer of proof, a proper offer of proof. Now as we have indicated before, I don't know what use will be made, of course, in a record of these offers of proof if the case is reviewed, but we are faced with a situation here which I have never been faced with in my forty-eight years at the bar, and I think your Honor hasn't been faced with many of the problems that are arising here. I must say we are traveling on untested ground. But that doesn't mean we should not follow the normal rules that apply to offers of proof, and they should be confined to relevant matter and material matter, as the Court has limited the issues.

So we have the double objection to this material that it is not relevant to the issue your Honor has carved out of this case, and it isn't made in good faith.

Your Honor has ruled on one of the aspects of this, and that is the immateriality and irrelevancy of it. Where that leaves us on the good faith part, I don't know. But I do say that it is their obligation, if they make representations to the Court which are directly challenged, it seems to me clearly their obligation to support

1108 their offer and show that it is made in good faith, even if it is irrelevant. But all that should be outside the presence of the jury, which is the real point I am making this morning.

By the Court: Judge Thompson, I intend to rule upon all of it at the conclusion of the case, and perhaps by written opinion on all of the facts and issues involved before me.

I cannot amplify what I have said before. As long as counsel advises the Court that it is made, that this offer of proof, regardless of how wide a range it may be from the facts in the depositions or in the offer, as long as he says it has a tendency to prove public injury, that is the only reason upon which I am listening to it. I don't want to go any further than that. My ears are open all the time. I know what is going on — I think I do.

The difficulty is if I open the door by permitting any one witness to take the stand to dispute factually the offer of proof, I am discarding my entire second week of trial on the limited issue.

I reserve it. I am not going to throw it out. I want the Court of Appeals, and as I said it is going up one way or the other, it doesn't make any difference,
1109 I am going to make my position as clear as I know how by a written opinion on all these rules and all that transpired here so there will be no question in the Court's mind and I seek no advantage or disadvantage for either side but want them to follow my rule as I see it, and I want a clearcut case as to whether or not I can invoke, have a right to invoke the separation of issues in the trial of an anti-trust case. That is all.

All right, Judge, if you want me to, I will reserve my ruling for the record on the question just raised before me by these three citations. I think I have known that. These irrelevancies that you are talking about in these three cases, and there are others even more recent than that. Irrelevancy is the point where they are not being offered remotely on any issue, but as long as counsel insists that these are being offered on the issue which I isolated, the public injury, I cannot prejudge it and say to him I will not permit you to do it. You have got to stop it.

So let's proceed with the trial.

By Mr. Thompson: You have made it very clear.

By Mr. McConnell: I just want to say one little thing, if I may.

1110 Good faith is challenged here by Judge Thompson. I didn't bring this case, but I came into it. We haven't done everything in this case except in good faith.

1111 We have a case which we think has merit, and we have brought it, and we have sponsored it, and we don't take one step backwards from our sponsorship of this lawsuit.

We have a quarrel with your Honor which I am not trying to make personal at all. I am trying to make a record here. We can't help it, but sometimes there comes in the lives of lawyers and judges conflicts where there are issues raised, where one side is trying to make a record, and that is what we are trying to do.

By the Court: May I ask one question?

By Mr. McConnell: Yes.

By the Court: Have I stopped you from making your record?

By Mr. McConnell: No.

By the Court: Haven't I sustained you all the way to make the record?

By Mr. McConnell: You are letting us make the record.

By the Court: Absolutely.

By Mr. McConnell: Judge Thompson is attacking our good faith.

By the Court: I have not said it is in bad faith. I think I have defended your position by saying as

1112 long as you are offering it on that label, I have no choice but to accept it, and it is in good faith, and I will tell you why it is in good faith.

It is your honest contention, and I recognize it, that public injury embraces that type of evidence, and I am

in no position at this time to say yes or no, and I want to reserve my ruling until the final adjudication when I will determine that for the record.

As far as the offer of proof is concerned, in that area you are absolutely within your rights.

By Mr. McConnell: All right. The reason I want that in the record is that my good faith has been challenged. I have practiced law in this court for thirty-six years, and nobody has ever proved that I have tried or even alleged it, as far as I know, up to this moment, that I have tried to deceive a Court or to do anything outside the confines of a lawyer's lawful position in a court room.

I have no motive in doing anything else.

By the Court: I want to say this: May I interrupt, please?

There is just one qualification that I am not passing upon. One of the serious charges made by Judge
1113 Thompson, both Friday and today, is addressed, not to the area of proof, but to the stretching of it beyond imagination, far beyond the scope of the transcript of depositions or far beyond any possibility of proof if the witness were on the stand.

That is where you two differ, not on the area.

By Mr. Thompson: That is right.

By the Court: On that score I would like to say this; that I can't pre-judge it as to what he would testify to or how far he would go or how far you can stretch it.

I will not permit him to testify on any phase of it where I destroy my principle. Is that clear?

By Mr. McConnell: Yes. Let me read this to your Honor. I don't know how I can be charged with bad faith, when we argued before Judge Sullivan as to what was public injury and he ruled:

1114 "It is urged that the complaint is fatally defective in that it fails to allege an injury to the public as

opposed to a merely private wrong; and of course such an allegation is required. In the instant case, however, the requirement has been met. The allegation of the elimination of competition for the contract to provide terminal transfer services is itself sufficient."

How can I be charged? You may say I am wrong. You may not agree with me. You may rule against me, which you are doing, but I don't see how Judge Thompson can charge me with bad faith in asserting we are entitled to make an offer of proof within the limitations Judge Sullivan has previously ruled.

By the Court: Haven't I covered it fully?

By Mr. McConnell: Yes, but I want the record to show my answer to him. I didn't want to sit here and listen to him make charges like that, which are as false as can be.

By the Court: I want to say this to Judge Thompson. I certainly don't want any misunderstanding in the record insofar as the defendants are concerned in waiving
1115 any of their rights. If Judge Thompson feels at the conclusion of your offer of proof, that he wants to do likewise in his offer of proof, I shall go equally as far with him as I have with you, and perhaps that may answer any possible fear or apprehension about what the Appellate Court may surmise was in my mind, although I will try to make it so clear, and it is my opinion when I sustain an objection to the offer and proceed to strike it from the record, nobody is bound by it insofar as a new trial is concerned or insofar as sending it back for review is concerned.

By Mr. McConnell: He knows that is the law. He knows it. He has been through it many, many times. He is trying to make a false issue here and get tangled up in something else.

By the Court: I am trying to protect the defendants against any possible, shall I say, apathy or indifference.

By Mr. McConnell: I offered to stipulate on that.

By Mr. Thompson: Your Honor, to shorten this whole thing up—

By the Court: That is a bad word "stipulation" in this case, and let's not go into it any more. I have used the word "stipulation" three or four times respect-
1116 fully and not in any derogatory sense, nor do I know what you were talking about. It was in the absence of the Court, so I can't possibly approve or criticize. I have to stand moot on it.

1117 By Mr. McConnell: My offer was made in the presence of the Court in your chambers.

By the Court: I beg your pardon?

By Mr. McConnell: I offered to shorten this whole thing up.

By the Court: I am talking about where you were excused for one hour to discuss the stipulation. Yes, you offered in my presence to do that, and then you recessed for an hour, and then when you came back Judge Thompson said, "We can't accept it. Let's go to trial."

By Mr. Thompson: If the Court please, I just want to put Mr. McConnell at ease. I have made no challenge, and I think the Court just pointed out the distinction a moment ago, but I have made no challenge of good faith in making their offers of proof on this issue outside of the issue which your Honor has stated.

My challenge of good faith rests solely and only on the representations that were made here on Friday, not by Mr. McConnell that a witness would testify to certain things whereas I know the witness will not testify to it, and all of the record that is now made by deposition shows that the statements were false.

1118 That is my only challenge of good faith, and Mr. McConnell is not guilty of that up to now.

By Mr. Freeman: Your Honor, I am not going to answer that hideous remark. I don't think we need go any further on that.

By the Court: That is right.

By Mr. Freeman: I want to say to your Honor that I believe I have offered the Cross depositions, but I would offer them precisely on the point of good faith.

Cross has already testified under oath, and I think I said it the other day, to 95 per cent of what I had read. The items he had not testified to I specifically pointed out to you.

Some of these items, I mean this Carrollton tractor deal, are to be established by documentary evidence we have put in through Mr. Monaco and that we will put in through Mr. Forgash.

With that [illegible]amentary evidence before us, Mr. Cross would have [illegible] make certain concessions, which he hasn't made yet, [illegible]ause we have not interrogated him about it yet.

Our side has given further considerations to the conduct of these proceedings, and we would like to
1119 shorten it without stipulation. We would like to make various offers of proof in just as digested a form as we can adhering to the facts and making understatements as I have in the case of the Cross representations where they were understatements of the record.

I would like to proceed with that, if I can. If Mr. Thompson has objection to the form of the offer of proof, I will give that consideration when it occurs, but I would like, without the jury present, to see if we can progress this and get it done today or tomorrow. I think possibly we can.

We may want one or two live witnesses.

By the Court: Mr. Freeman, I want to say it again, and I think I have indicated over the objections of the defendants that I have permitted you to make your offer of proof. I want you to make it. I want the record to be complete with it.

I want one issue preserved, and that is the separation of issues without prejudice to the plaintiff or the defendants.

By Mr. Freeman: Your Honor, I want to proceed with the offer.

By Mr. McConnell: May I suggest this: Can't we let the jury go home today and try and get through with all of our case on offers of proof, and then they could come back tomorrow?

1120 By the Court: I thought you might say you wanted to waive the jury and proceed with the whole thing. How long will it take with the offer of proof?

By Mr. McConnell: We should be through with our whole situation today.

By the Court: All right; bring out the jury. Let the record show that the plaintiff — will it be stipulated that the balance of the offer of proof may be had without any witnesses from the witness stand before the jury?

By Mr. Freeman: In most instances we can support it by depositions, and we will offer it that way. For example, one witness I would want to call, but I am willing to waive his presence here, and that is Wayne Johnston, President of the Illinois Central.

He has testified in deposition, and I will not go beyond his testimony in the depositions, so I can proceed that way or proceed in person, and I think Mr. Thompson might waive the necessity of his presence.

By the Court: I would recommend it. I see no objection if it can be stipulated at that point at this time

with all the witnesses having taken the witness stand
1121 already, that the balance of the offer, along the same line, with the same pattern, may be proceeded with without any technical compliance, whatever we call it, procedural requirements.

By Mr. Thompson: I don't think they are technical, and I don't think they are procedural.

By the Court: All right.

By Mr. Thompson: I think they are very much of substance, and that is that the rule provides in so many words what shall be done. Obviously, they don't have to put the live witness on the stand. They can use the deposition. The witness is not present, and they can use the deposition.

By the Court: Do you agree on letting me send the jury home so we can spend the entire day on the offer of proof?

By Mr. Freeman: May we have a recess?

By the Court: If there are occasions presented where you will require it, I will permit you to do it tomorrow morning.

By Mr. Freeman: May we have a recess so they can consult about it?

By the Court: I will give you a ten-minute recess, yes, sir.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1122 By the Court: All right, proceed.

By Mr. Thompson: Your Honor, no one wants to expedite this matter any more than counsel for the defendants.

It has been our position all along that these offers of proof on what we regard as immaterial to the issue that your Honor has defined, and irrelevant to that issue, should be made out of the presence of the jury. Of course,

we have no objection to the jury being excused for the day and these offers being made which we regard as irrelevant and immaterial to the issue. If there is any competent evidence on that issue that ought to be presented, it can be presented to the jury tomorrow.

By the Court: As a matter of fact, Judge Thompson and gentlemen for the plaintiff, I have kept on saying when these offers are made and I exclude them, it is with the understanding I am only excluding that part which is consistent with my ruling, and not anything that may be brought in factually.

Bring out the jury.

Off the record.

(Whereupon a discussion was had outside the record.)

1123 (Thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen, and goodbye. By agreement of counsel and the Court, we are going to spend the entire day on considerations that do not come within your province, and so with our compliments, you may go home. Have a nice day, and please don't discuss this case with anyone, not even among yourselves.

We will see you tomorrow morning at 10:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right.

By Mr. Freeman: I would first like to offer to prove certain toll slips, telephone calls, made from Cross's home telephone in Maryland and later from Keeshin's various telephones to Cross.

I first offer the deposition of N. Page Worthington, who is the general promotional manager of the Ches-
1124 apeake and Potomac Telephone Company of Maryland, who testified that he was employed for many years and has charge of the toll records maintained by the company;

That the telephone number Oliver 2-6019 is the only telephone number listed under the name of Hugh W. Cross during the period January 1, 1955 and March 26, 1956;

That he is familiar with the telephone records kept by the company and these records are maintained in the regular course of business in order to enable the company to bill its customers.

1125 Mr. Worthington would testify to the type and character of information that is contained on these toll slips, including the fact that the ticket shows the place and the number called, the time of the call, the time that the call is commenced and the time that the call is ended, the party who is being called, if it is a person-to-person call. It would show that the call was made from one telephone number but charged to another.

The toll tickets are the basic records maintained by the company for submitting or preparing the toll statement that comes to the customer's bill each month, and that it is as accurate a record as they can maintain, including the utilization of numerous automatic electronic devices.

I won't bother to try to name those.

That Mr. Worthington identified a series of toll slips running from C&P Exhibit 1 through C&P Exhibit 92. For the purpose of this offer, however, I will restrict myself to the identification through Mr. Worthington's deposition the following toll charges made against the Oliver 2-6109 number in Maryland.

C&P Exhibit 3-E — I believe I will identify these
1126 under one number with a series of letters just to simplify it — which is a call from Hugh Cross' home telephone number to John L. Keeshin on April 6, 1955, at 11:00 o'clock at night, which lasted sixteen minutes. This I will identify as Plaintiff's Exhibit 64-A.

By Mr. Meserow: Excuse me, Mr. Freeman.

If your Honor please, maybe we can shorten this a little bit. Your Honor has already excluded all these so-called long distance telephone calls, the documentary evidence with respect to them. Now we have the additional objection on the ground that they are not relevant to the issue of public injury.

There are quite a few here, I see. Can't we, instead of objecting at the end of this offer and having your Honor strike them, can we have some ruling now to exclude them?

By the Court: You can have a standing objection to all of them, and I will rule upon them when he is through the offer. You will be fully protected.

I might make only one suggestion —

By Mr. Freeman: I won't read them all.

By the Court: Only for brevity, and not for curtailment, if you will say I have here seventy calls, or fifty calls, in the same category.

1127 By Mr. Freeman: I am going to do that. I will identify them, but not as extensively as I have started.

By the Court: That is right.

By Mr. Freeman: You are right. I will abide by your statement.

By the Court: That is for brevity only.

1128 By Mr. Freeman: I would like to put the record straight, however. Your Honor has not ruled these toll slips inadmissible, not in your memorandum. Mr. Meserow is wrong.

Let me start over again, Miss Reporter, and just identify as Plaintiff's Exhibit 64-A, consecutively through the end of the alphabet, these various slips:

Slip previously identified as C&P Exhibit 3-E as Plaintiff's Exhibit 64-A; C&P Exhibit 4 as Plaintiff's 64-B; C&P Exhibit 5 as Plaintiff's 64-C; C&P Exhibit 7 as Plaintiff's 64-D; C&P Exhibit 6 as Plaintiff's Exhibit 64-E; C&P Exhibit 8-B as Plaintiff's Exhibit 64-F; C&P Exhibit 8-D as Plaintiff's Exhibit 64-G; C&P Exhibit 13 as Plaintiff's Exhibit 64-H; C&P Exhibit 14 as Plaintiff's 64-I; C&P Exhibit 16 as Plaintiff's 64-J; C&P Exhibit 17 as Plaintiff's Exhibit 64-K; C&P Exhibit 18 as Plaintiff's Exhibit 64-L; C&P Exhibit 22 as Plaintiff's Exhibit 64-M; C&P Exhibit 23 as Plaintiff's Exhibit 64-N; C&P Exhibit 24 as Plaintiff's Exhibit 64-O; C&P Exhibit 25 as Plaintiff's Exhibit 64-P; C&P Exhibit 26 as Plaintiff's Exhibit 64-Q and C&P Exhibit 26-B as Plaintiff's Exhibit 64-R; C&P Exhibit 27 as Plaintiff's Exhibit 64-S; 1129 C&P Exhibit 28 as Plaintiff's Exhibit 64-T; C&P Exhibit 30 as Plaintiff's Exhibit 64-U; C&P Exhibit 29 as Plaintiff's Exhibit 64-V; C&P Exhibit 31 as Plaintiff's Exhibit 64-W; C&P Exhibit 34 as Plaintiff's Exhibit 64-X; C&P Exhibit 36 as Plaintiff's Exhibit 64-Y; C&P Exhibit 38 as Plaintiff's Exhibit 64-Z; C&P Exhibit 41 as Plaintiff's Exhibit 64-AA; C&P Exhibit 43 as Plaintiff's Exhibit 64-BB; C&P Exhibit 47 as Plaintiff's Exhibit 64-CC; C&P Exhibit 48 as Plaintiff's Exhibit 64-DD; C&P Exhibit 49 as Plaintiff's Exhibit 64-EE; C&P Exhibit 51 as Plaintiff's Exhibit 64-FF; C&P Exhibit 52 as Plaintiff's Exhibit 64-GG; C&P Exhibit 60 as Plaintiff's Exhibit 64-HH; C&P Exhibit 58 as Plaintiff's Exhibit 64-II; C&P Exhibit 61 as Plaintiff's Exhibit 64-JJ; C&P Exhibit 62 as Plaintiff's Exhibit 64-KK; C&P Exhibit 63 as Plaintiff's Exhibit 64-LL; C&P Exhibit 64

as Plaintiff's Exhibit 64-MM; and C&P Exhibit 82 as Plaintiff's Exhibit 64-NN.

(Thereupon said documents were marked, respectively as Plaintiff's Exhibits 64-A through 64-Z and 64-AA through 64-NN, inclusive, for identification.)

By Mr. Freeman: I will offer a summary of these so that we can save time. I offer these exhibits, Plain-
1130 tiff's Exhibits 64-A through 64-NN under Mr. Worthington's deposition.

By Mr. Thompson: I object to the offer of the documents on the ground that there is nothing in the offer that shows that they have any relation to the subject matter of the lawsuit in the first place, and certainly any relation to the issue as the Court has defined it.

By the Court: If these tend to go to the issue of conspiracy, I will sustain the objection.

By Mr. Freeman: They go to the part played by Cross in these negotiations, so I assume that is the issue of conspiracy.

By the Court: I am not objecting to the offer. I merely say on the ruling, if they pertain to the issue of conspiracy, the objection will be sustained.

By Mr. Freeman: I understand.

By Mr. Owens: I make the further objection to these, your Honor, that a proper foundation has not been laid for the introduction of those documents.

By the Court: That objection will be overruled.

By Mr. Freeman: I would also offer to prove through Mr. Benjamin E. Campbell, whose deposition was taken, and who is a supervisor of the Illinois Bell Telephone Company and has complete charge of the records that need to be produced in compliance with legal pro-
1131 cess, that he would testify that he has responded to some 600 or 650 subpoenas, and has produced records of telephone toll charges;

That these records are prepared at the time the call is made, and they are preserved for a period of time and utilized in the regular course of the company's billing for billing purposes against the customer;

That the actual original records were prepared by the company for this purpose and were produced at this deposition.

I would also say that the original toll slips were produced at the Worthington deposition. I have had marked photostats pursuant to an agreement with counsel.

He would further testify that these toll slips indicate person-to-person calls, indicating calls from a named individual to a named person, and they would indicate from what telephone it was made; that in some instances the toll slips are the result of the use of credit cards, and all this information is contained on the toll slip;

That the first series of toll tickets that were identified by Mr. Campbell are identified in a series called Illinois Bell Exhibits 3—and then a series of numbers, 1132 calls either made from or charged to the number ANdover 3-6685, which Mr. Campbell has identified as the number which lists John L. Keeshin as the subscriber.

I would have marked and offered in evidence as Plaintiff's Exhibit 65-A, and the sequence of letters following in the 65 series, the following toll slips that have been previously identified in Mr. Campbell's deposition as Illinois Bell Exhibit 3-1; Illinois Bell Exhibit 3-10 as Plaintiff's Exhibit 65-B; Illinois Bell Exhibit 3-13 as Plaintiff's Exhibit 65-C; Illinois Bell Exhibit 3-25 as Plaintiff's Exhibit 65-D; Illinois Bell Exhibit 3-27 as Plaintiff's Exhibit 65-E; Illinois Bell Exhibit 3-28 as Plaintiff's Exhibit 65-F; Illinois Bell Exhibit 3-29 as Plaintiff's Exhibit 65-G; Illinois Bell Exhibit 3-30 as Plaintiff's Exhibit 65-H; Illinois

Bell Exhibit 3-31 as Plaintiff's Exhibit 65-I; Illinois Bell Exhibit 3-32-A as Plaintiff's Exhibit 65-J; Illinois Bell Exhibit 3-36 as Plaintiff's Exhibit 65-K; Illinois Bell Exhibit 3-37 as Plaintiff's Exhibit 65-L; Illinois Bell Exhibit 3-38 as Plaintiff's Exhibit 65-M; and Illinois Bell 3-55 as Plaintiff's Exhibit 65-N.

(Thereupon the said documents were marked Plaintiff's Exhibits 65-A through 65-N, for identification.)

1133 By Mr. Freeman: I offer Plaintiff's Exhibits 65-A through 65-N through Mr. Campbell.

In addition, Mr. Campbell identified a series of toll tickets that were charged to the number of Forest 9-3450 or -3451, and Mr. Campbell has testified that these numbers were telephones listed or telephone service purchased by John L. Keeshin and listed as his home telephone numbers.

These ticket toll slips have been identified as Illinois Bell Exhibits 4 — then the A and B series, and I would offer them in evidence as Plaintiff's Exhibits 66-A, and the following sequence:

Illinois Bell Exhibit 4-A as Plaintiff's Exhibit 66-A; Illinois Bell Exhibit 4-C as Plaintiff's Exhibit 66-B; Illinois Bell Exhibit 4-D as Plaintiff's Exhibit 66-C; Illinois Bell Exhibit 4-K as Plaintiff's Exhibit 66-D; Illinois Bell Exhibit 4-M as Plaintiff's Exhibit 66-E; Illinois Bell Exhibit 4-O as Plaintiff's Exhibit 66-F; Illinois Bell Exhibit 4-Q as Plaintiff's Exhibit 66-G; Illinois Bell Exhibit 4-S as Plaintiff's Exhibit 66-H; and Illinois Bell Exhibit 4-R as Plaintiff's Exhibit 66-I.

(Thereupon said documents were marked, respectively as Plaintiff's Exhibits 66-A through 66-I, for identification.)

1134 By the Court: Same objection?

By Mr. Thompson: I object to the offer of these telephone slips for the same reason I objected to the others.

By the Court: Same ruling.

By Mr. Freeman: I would also offer in evidence the deposition of Mr. Morris Forgash.

Mr. Morris Forgash testified in his deposition that he is president of the U. S. Freight Company and its subsidiaries, and that it is the largest freight forwarding concern in the United States;

That in 1955, the U. S. Freight Company, 45 per cent of its stock was owned by the New York Central through Linden Securities Company, a wholly owned subsidiary of the New York Central;

That he knew that negotiations on the Chicago transfer subject were going on between Keeshin and the railroads and had spoken to Mr. Keeshin a number of times about it;

That he may have talked to Mr. Carpi, vice-president of the Pennsylvania Railroad, about the negotiations in Chicago, and that he knew Mr. Carpi very well;

That there were various telephone calls made from the number of U. S. Freight Company in New York,
1135 which was Oregon 5-5600 to Carrollton, Illinois and to Jerseyville, Illinois;

That Mr. Forgash testified that all of these calls that were charged to his company's number at Oregon 5-5600 or that sequence were calls that he made to Hugh Cross in that area — this occurred on page 74, Mr. Meserow, of his deposition, and on page 70 of his deposition, if you want to look at it.

Then on page 71 of his deposition —

1136 By Mr. Thompson: If the Court please, if he is going to offer the deposition —

By Mr. Freeman: I hear the remarks again about good faith, and I thought they might just want to look it up. I am almost through—

By Mr. Thompson: If counsel is going to offer the deposition, he doesn't need to recite it orally and then offer the deposition.

By Mr. Freeman: I am offering to prove through Mr. Forgash's deposition these facts. I am assuming that your Honor is not going to allow me to read the deposition before the jury.

By the Court: That is right.

By Mr. Freeman: And on that basis I am making this offer of proof, and nothing further than that.

By the Court: That is correct.

By Mr. Freeman: Mr. Forgash would further testify that he did visit with Mr. Cross at his home in Maryland; that during his visit the subject of the Chicago Transfer situation was brought up; that if the subject of the Chicago Transfer situation was brought up, Jack Keeshin's name certainly was mentioned.

With respect to Mr. Forgash, he would identify in his deposition the following toll slips: As Plaintiff's
1137 Exhibit 67-A, this call from ORegon 5-5600 on April 7 to Carrollton, Illinois; as Plaintiff's Exhibit 67-B; from the same number on May 17 to Carrollton, Illinois—

I must identify these because it is a little difficult to follow without it.

From the same number on June 5 to Jerseyville, as Plaintiff's Exhibit 67-C; as Plaintiff's Exhibit 67-D, from the same number on June 8 to Carrollton, Illinois;

As Plaintiff's Exhibit 67-E from the same number on June 13 to Carrollton, Illinois; the same number on October 23 to Jerseyville as Plaintiff's Exhibit 67-F; the same number on October 24 to Jerseyville as Plaintiff's Exhibit 67-G; as Plaintiff's Exhibit 67-H, call from Wash-

ington but charged to the same number, ORegon 5-5600, on October 27, and two calls to Jerseyville on October 29 and one call to Jerseyville, Illinois; and as Plaintiff's 67-I, calls on October 17 and November 9.

(Thereupon the said documents were marked Plaintiff's Exhibits 67-A through 67-I, for identification.)

By Mr. Freeman: Mr. Forgash would further testify with respect to Plaintiff's Exhibit 67-I for identi-
1138 fication, a toll charge to his home telephone at BU 8-1931, that he was visiting at Mr. Cross' home on October 17 and November 9, and that he used Mr. Cross' telephone while he was there and charged those calls to his home telephone.

1139 These appear as October 17 from Bradley, November 9 from Bradley.

By Mr. Meserow: What year is that?

By Mr. Freeman: All of these slips, excuse me, are 1955.

By Mr. Keating: Mr. Freeman—

By Mr. Freeman: Mr. Keating has very widely pointed out I have used the alphabet to identify these exhibits, and I ran out of the alphabet on Exhibit 64, and after you get to -Z, use -AA and -BB as an identification of the documents.

Then I would offer to prove through the deposition of Mr. Ennis, the auditor of the Sheraton-Carlton Hotel, that Mr. Forgash was registered at the Sheraton-Carlton Hotel on April 15, 1955 and while registered there made a long distance telephone call on that day to Mr. Carpi, vice-president of the Pennsylvania Railroad, in Philadelphia, and this slip has been identified as Ennis Exhibit 3-E, and I offer it here in evidence under Ennis' deposition as Plaintiff's Exhibit No. 68.

(Thereupon said document was marked as Plaintiff's Exhibit No. 68 for identification.)

By Mr. Thompson: Same objection. There is no
1140 connection or relevancy to the issue.

By the Court: The same ruling.

By Mr. Freeman: I offer in evidence as Plaintiff's Exhibit No. 69 a summary of the telephone toll slips that I have just offered on the designation of Exhibits 64 through 68, and I will furnish counsel with two copies, which is all I have.

(Thereupon said document was marked as Plaintiff's Exhibit No. 69 for identification.)

By Mr. Meserow: I want, for the record, to make objection to the telephone calls of Mr. Keeshin and Mr. Forgash. There is no foundation showing they have anything to do with the transfer situation, and further, they are beyond the scope of the issue here of public injury.

By the Court: I presume that they are being offered, if they were permitted to go into them, that they would connect them up.

By Mr. Freeman: Yes, I would definitely connect them.

By the Court: Objection sustained on my general ruling.

By Mr. Thompson: If the Court please, we certainly object to this summary of telephone toll slips, which has no foundation laid for it at all. It contains a
1141 lot of alleged statements of facts as to who talked to whom and how long they talked without any showing at all that somebody called someone else, and they went out in the garden and hunted him for fifteen minutes and didn't find him and came back and hung up. There is no proof here these conversations ever took place, and we object to this document.

By Mr. Freeman: Your Honor, this summary was prepared by a witness who would testify this is an accurate statement of the toll slips.

In any event, they only go to summarize the toll slips and the extent to which they contain any information, and I don't say that they—

1142 By the Court: The same ruling.

By Mr. Thompson: The toll slips are hearsay in the first place, an dthis is hearsay on hearsay.

By Mr. Owens: Furthermore the toll slips, if they have any value as evidence, would be as records, and these are not records.

By the Court: I can do no more than exclude them and strike it.

By Mr. Freeman: Your Honor, we have a right to present evidence and then summarize it for the purpose of the jury, and that is what we are doing in this summary.

By the Court: Proceed.

By Mr. Freeman: I would like to offer to prove through Mr. Wayne A. Johnston, who would be presented here as a witness and through his deposition, that Mr. Johnston was the president of the Illinois Central Railroad in 1955 and still is president of the Illinois Central Railroad; that in April of 1955 Mr. Johnston heard a rumor that Mr. Cross might leave the Interstate Commerce Commission and come to Chicago with Keeshin if he got the transfer contract.

That Mr. Johnston had a meeting of the American
1143 Association of Railroads' directorship on April 29, 1955, meetings of that association occurring the last Friday of each month, and he went to Washington in connection with that meeting, and while there he went in to see Mr. Cross.

That he asked Mr. Cross if there was any truth to the statement that if the Keeshin Company received the contract he was going to work for them, and Mr. Cross said that that was so.

That Mr. Johnston received a telegram from Mr. Cross on April 26, dated April 25, advising Mr. Johnston that Mr. Cross intends to come to Chicago between May 31 and June 2nd and would like an opportunity to come up and visit with Mr. Johnston.

That pursuant to the receipt of this telegram, Mr. Johnston sent an answering telegram to Mr. Cross, which I would like to have marked, and which would be identified by Mr. Johnston as Plaintiff's Exhibit No. 70.

(Thereupon the said document was marked Plaintiff's Exhibit No. 70 for identification.)

That Mr. Johnston, in his telegram, said he would be in Washington on May 27 and would try to see Mr. Cross; that he tried to see him on May 27, and Mr. Cross 1144 was not there, and Mr. Johnston would testify when he came back to Chicago he was visited by Mr. Cross on June 1, 1955.

That Mr. Johnston would testify he talked to Mr. Cross about the possibility of a job for Cross' son; that Cross was a very personal friend of his of long standing.

Mr. Johnston, in addition, has testified that during 1955 and during the time that Mr. Cross, that he had these chats with Mr. Cross, that there were important Interstate Commerce Commission cases pending before the Interstate Commerce Commission involving the Illinois Central Railroad.

That is all I would offer to prove by Mr. Johnston, Mr. Thompson, and if you want to raise an objection, go ahead.

By Mr. Thompson: Yes; we challenge that Mr. John-

ston would testify that this conversation with Mr. Cross took place on a stated date or that he would testify as to when he heard the rumors. He was very uncertain about it, and he testified on two occasions, and on each occasion he was not able to give any definite time, but he said it may have occurred at this time when he was in Washington, and that is about as far as that went.

By Mr. Freeman: May I go on with my offer in
1145 view of Mr. Thompson's objection?

Mr. Johnston would further testify that the AAR had its meetings the last Friday of every month.

1146 That his diary showed that the meeting that was held the last Friday in March, he did not attend because he was in Mississippi on a vacation; that the meeting held in May he did attend, but he tried to see Cross and couldn't see him.

That the meeting held in June was held in Chicago; that the only meeting at which this could have occurred would have been April 29, 1955, because Mr. Johnston testified, and I offer to prove through his testimony, that this conversation with Mr. Cross occurred prior to the time that the decision was made to accept Keeshin as the transfer agent.

Mr. Johnston would further testify that at no time did he tell Mr. Cross that he thought Keeshin should go out and get the air porter service; that he did not tell Mr. Cross it would be a good thing for Keeshin to get both the transfer of passengers to the air port and between railroad stations.

That he did not tell Cross he felt the business of transporting passengers by rail didn't look very good, and did not suggest to Cross that Keeshin should give him a job and didn't even make such a suggestion in jest.

By the Court: The same ruling.

1147 By Mr. Freeman: I would offer to prove through Mr. R. P. Smart, who is and was the general pas-

senge[illegible]ent for the Illinois Central Railroad in 1955, that Mr. Smart attended the Chicago Terminal Lines' meeting as a representative of the Illinois Central; that he was selected to serve on the Committee of Six Railroads negotiating for a new transfer contract.

That Mr. Kimbel was the general passenger traffic manager of the railroad and also attended these meetings and stayed in close touch with the Chicago transfer issue and the negotiations.

Mr. Kimbel died the latter part of 1955; and that in the interim between May, between Mr. Kimbel's death and June 16 when a new general passenger traffic manager was selected, Mr. Grenrott, Mr. Hearne served as the general passenger traffic manager.

That Mr. Kimbel on several occasions had said that there should be no change in the transfer company unless there was "A very substantial saving in transfer charge."

That Mr. Kimbel had expressed himself as satisfied with the Parmelee Transportation service; that Mr. Smart could find no memorandum in any of the Illinois Central passenger files prior to June 3, 1955, which
1148 commented unfavorably about Parmelee's service.

That minor complaints by the passenger department were corrected when reported to Parmelee, and this report was usually made to Mr. Scheeder; that he had no recollection and would have no recollection with respect to any of these negotiations except what was contained in the memoranda in the file.

1149 That was going to be Mr. Smart's attitude on the stand in answer to all questions.

That he had received no complaints against Parmelee's equipment; that he had never filed a complaint with Parmelee; that there was no memorandum in the file commenting unfavorably about Parmelee's equipment.

That he had never asked Parmelee to use station wagons, and the Illinois Central had never asked Parmelee to air condition its equipment or to replace any of its equipment.

That Parmelee did replace its equipment every three years; that they used specially built equipment with enclosed baggage compartments, and the station wagons proposed by Keeshin did not have such enclosures.

That Mr. Smart in all of his dealings with Parmelee found them to be reliable; that they performed work and lost money; that they fulfilled their commitments at all times, and that Parmelee supplied the committee with all financial information requested.

That at no time had he experienced any difficulties, or did the Illinois Central experience any difficulties 1150 by reason of Parmelee's dispatch system.

That with respect to Keeshin's equipment, Mr. Smart would testify that the station wagons that were ultimately used were the same as had been described in Mr. Keeshin's December 1954 proposal; that he objected to the lack of exits in the Volkswagen, but no effort was made by Keeshin to correct that; and Volkswagens were placed in service.

That he objected to the use of school buses because of inadequate baggage space, that the buses were put in service.

That the adequate handling of baggage is an important aspect of the passenger transfer, and that there are three different phases of the baggage handled — the baggage accompanying the passenger, the baggage that is checked through, which doesn't accompany the passenger, and the pickup and delivery of baggage in the metropolitan area.

Some objections to the methods proposed by Keeshin to handle baggage were raised by other railroad representatives.

Keeshin's proposal at first was to handle the baggage on the top of the station wagons exposed to the
1151 weather. This suggestion would have required the use of a tarpaulin, but none were shown to the committee inspecting the equipment.

That on May 20 he prepared a memorandum, which has been previously identified as IC-18, and which I will have identified here as as Plaintiff's Exhibit No. 71.

(Thereupon the said document was marked Plaintiff's Exhibit No. 71 for identification.)

That this memorandum was discussed with Mr. Hearne and with Mr. Kimbel: that it was prepared in the ordinary course of business; that it was prepared after the May 19, 1955, committee meeting, but it represented Mr. Kimbel's thinking on the subject and not Mr. Smart's, so Mr. Smart would testify.

This memo is addressed to the vice president in charge of transportation. Actually, your Honor, this memorandum would be admissible, and I don't think it should be excluded under the same category.

It deals with a comparison of Keeshin's service and Parmelee's service and ends up by recommending they continue with the Parmelee service.

1152 This is a May 20 memo.

By the Court: That comes under my general ruling, that if it does not pertain to the conspiracy, it may be received in evidence.

By Mr. Freeman: This is in the same category as two other memos.

By the Court: I say my ruling covers that.

By Mr. Freeman: That two copies of this memo were presented to the vice-president, but neither copy has been found.

That on April 20, Mr. Smart received a telephone call from Mr. Bone of the New York Central Railroad in

which Mr. Bone advised him that presidents of railroads have been contacted by transfer companies on this issue, and Mr. Bone suggested that a matter of policy was involved which required the presence of top level passenger executives at the next committee meeting.

Mr. Smart prepared a memorandum of that telephone conversation, which is identified as IC-31, and which I would like to here identify as Plaintiff's Exhibit No. 72.

(Thereupon said document was marked as Plaintiff's Exhibit No. 72 for identification.)

1153 That this memorandum was prepared in the regular course of business, Mr. Smart would say, and was shown to Mr. Kimbel, who had a penciled notation in the right corner, "Remind me."

That on June 2nd in the late evening, Mr. Smart received a telephone call from Mr. Hearne, his then superior, requesting Mr. Smart to canvass the other railroads to see what their attitude was pursuant to a request to that effect made by Mr. Trovillion.

By Mr. Thompson: That statement has no basis, the latter part of it, and I will challenge it.

By Mr. Freeman: You do?

I will read the deposition in a minute for Mr. Thompson's benefit, but away from the Court.

That Mr. Smart did call as many of the railroad representatives on the committee as he could between the course of 7:00 p.m. and 10:00 p.m. on June 2nd, the day before the committee meeting was to take place on June 3rd in the morning.

That there was no previous instance, Mr. Smart recalled, of any such canvass of the committee.

That Mr. Holt of the Pennsylvania Railroad did not express his own view but stated that Keeshin had been O.K.'d in Philadelphia.

1154 That a memorandum of this conversation or memorandum recording this conversation was prepared by Mr. Smart and was identified as IC-28, and I would like to have it here identified.

Mr. Smart would testify that the memorandum was prepared in his handwriting, contemporaneously with his conversations with these people the night of June 2nd, and I would like to have this marked as Plaintiff's Exhibit No. 73.

(Thereupon said document was marked as Plaintiff's Exhibit No. 73 for identification.)

Here again Mr. Smart would testify that when he called Mr. Holt, Mr. Holt told him that according to the memorandum, Keeshin's proposal had been O.K.'d by Philadelphia.

When he spoke to Mr. Coleman of the Baltimore and Ohio, Mr. Coleman advised him that Mr. Whittington would attend the meeting of June 3rd and would advise him then.

When he spoke to Mr. Quackenbush of the North Western, he was unable to give him any advice which proposal the North Western would favor, but Mr. Quackenbush said he would attend the meeting on June 3rd and hoped that he could announce the decision at that time.

1155 That Mr. Smart attended a meeting early on the morning of June 3rd, with Mr. Trovillion, vice president of the Illinois Central, and Mr. Hearne, and that at that meeting, Mr. Trovillion gave him instructions for Keeshin.

By Mr. Thompson: Now, if your Honor please —

By Mr. Freeman: Page 1183, Mr. Thompson. Look at the record.

That Mr. Smart would testify that Railway Express Agency had submitted a proposal upon the transfer serv-

ice in 1955 at cost plus fifteen percent, and had been rejected:

That Willett had submitted a proposal at the same rate as Parmelee, and that had been rejected. Willett's proposal, Mr. Smart would testify, also included the proposition that the railroads would load and unload baggage.

That the Keeshin proposal was at the same rate, and Mr. Smart had prepared a memorandum undated but identified as IC-29-A, which Mr. Smart would identify, as being prepared in his handwriting, and which he would testify reads:

> "Loading and unloading trailers at baggage room docks. Personnel don't favor because of I.C. help.
> 1156 Consult baggage department about Keeshin proposal."

I would like to identify this as Plaintiff's Exhibit No. 74 for identification.

(Thereupon the said document was marked Plaintiff's Exhibit No. 74 for identification.)

I have nothing further that I would offer through Mr. Smart.

By Mr. Thompson: We advise the Court that Mr. Smart is not a managing agent and therefore cannot be called, excepting as the statute provides, where he is dead or absent from the jurisdiction, and what have you, but Mr. Smart has been in the courtroom every day since last Tuesday at the request of plaintiff, and he is available to testify, and if they want his testimony, they can produce it.

We say Mr. Smart will not testify as has been represented.

By the Court: The same ruling.

By Mr. Freeman: All right.

By Mr. Thompson: And we object to the testimony.

By Mr. Freeman: I would also offer in evidence in

view of some of the remarks that have been made by Mr. Thompson, the deposition of Mr. D. J. Hearne,
1157 who was, during this period from May 10, 1955, to June 16, 1955, the acting general passenger traffic manager of the Illinois Central.

Mr. Hearne is now deceased.

Mr. Hearne in his deposition testified that he discussed the May 20 memorandum with Mr. Smart and signed that memorandum with Mr. Kimbel's signature.

That Smart said that Kimbel had directed his recommendations along those lines; that Hearne testified that he had said to Smart, "You have been through all this and you know all about it, and I will accept your recommendation."

That he could not remember any other conversation with Smart from the time of this memorandum recommending Parmelee until the night of June 2nd.

That on June 2nd, on the night of June 2nd, Trovillion called Mr. Hearne, realizing that the matter was coming up the following day in committee, and asked Mr. Hearne if he knew the position of the other lines; that Mr. Hearne said that he would develop that information and called Smart that evening to do so, and also told Smart that Trovillion wanted to see them early the next morning
1158 before the committee meeting.

That Mr. Hearne testified that they got to the committee meeting—that they got to Mr. Trovillion's meeting early that next morning; that they discussed the proposals and then Mr. Trovillion said, "Bless you. Use your own judgment."

1159 That is all I have of Mr. Hearne.

By Mr. Thompson: If they are offering Mr. Hearne's deposition, it is properly offered, of course, because he is dead, but we object to this summary of testimony as having no bearing on any of the issues and as

not supported by any oath of any kind.

By the Court: The same ruling.

By Mr. Freeman: Your Honor, of course we would offer Mr. Hearne's deposition, and we would read it before the jury, but in view of the fact that part of this deals with the conspiracy issue, we are telescoping it.

By the Court: The same ruling, Mr. Freeman.

By Mr. Freeman: I would next call some New York Central witnesses, Mr. Keating, and the first of these would be Mr. Fred H. Baird, who in 1955 was the assistant vice-president in charge of passenger traffic on the New York Central Railroad and located in New York City.

That he did in that capacity supervise the Chicago transfer services, and he received reports regularly from Mr. Bone on these problems.

His telephone calls were infrequent. He knew Mr. Markin and testified that Mr. Markin and the Parmelee company always fulfilled their commitments.

1160 That Parmelee had presented a proposal to the railroads dated March 15, 1955 and that he had received, that Mr. Baird had received a copy of this proposal from Mr. Padrick on March 22, 1955 and had addressed a reply to Mr. Markin approving of the Parmelee proposal.

I ask to have marked for the purpose of identification this copy of a letter dated March 24, 1955 from Mr. Baird to Mr. Markin as Plaintiff's Exhibit No. 75.

(Thereupon said document was marked as Plaintiff's Exhibit No. 75 for identification.)

That Mr. Baird would testify that he did execute the letter and mail it to Mr. Markin on March 24, this letter identified as Plaintiff's Exhibit No. 75, and in this letter he says:

"I have read your proposal of March 15 addressed to Mr. Padrick concerning the transfer service per-

formed by Parmelee Transportation Company at Chicago. I see no reason why it should not be adopted by the Chicago Terminal Lines as it impressed me as being fair and reasonable."

That on April 21, 1955, Mr. Whittington of the
1161 Baltimore and Ohio met with Mr. Baird in New York City. That he remembers some conversation with Mr. Whittington about the transfer situation, but that he denies that Mr. Whittington came to New York for the purpose of determining what type of increase in passenger fares the competing railroads in the east would fix.

That he does not fix passenger fares that way and denies that Mr. Whittington ever made any such suggestion to him.

That Mr. Baird could not recall whether or not he transmitted information to Mr. Bone with respect to contacts being made against railroad presidents.

That on April 27, he did receive a memorandum from Mr. Bone, and this memo I would identify as Plaintiff's Exhibit No. 76, for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 76 for identification.)

It has been coded as New York 308 and 309.

This memorandum, as Mr. Baird has testified was transmitted to Mr. Nickerson, the vice-president of the railroad for answer. The memorandum in part says that Mr. Perlman, the president of the New York Central
1162 Railroad, has talked with Mr. Fawcett, the resident vice-president in Chicago, regarding the status of the transfer situation.

That the Keeshin and Parmelee proposals are indicated, and the memorandum says in the next to the last paragraph as follows:

1163 "When Mr. Perlman discussed the matter with Mr. Fawcett he asked if I . . ." Mr. Bone ". . .

could keep the case open for decision until he could have an opportunity to analyze it. Would you please advise what our position in the case should be in view of the analysis by Mr. Perlman?"

That is in the next to the last paragraph.

Mr. Baird would further testify that on May 19 and May 20 he received memoranda from Mr. Bone dealing with the negotiations, and pursuant thereto prepared his own memorandum on May 20, 1955, which I would have identified as Plaintiff's Exhibit No. 77.

(Thereupon the said document was marked Plaintiff's Exhibit No. 77, for identification.)

That in this memorandum Mr. Baird would testify he did try to summarize the situation and was of the opinion that both the Parmelee and Keeshin bids are very close, and that both propose escalator clauses and both propose new equipment and both propose five-year contracts.

That he would testify he received a call from Mr. 1164 Bone on May 24, but does not recall the substance of that call. That he knew that Mr. Keeshin was not in the transfer business, the passenger transfer business and didn't know whether he had any experience in the carrying of passengers, that he wanted an enforceable contract with Keeshin, and subsequent to his telephone call from Mr. Bone he received a recommendation from Bone of Keeshin on May 24, and pursuant to that recommendation Mr. Baird prepared a memorandum to Mr. Nickerson, his vice president, dated May 26, which I would have identified as Plaintiff's Exhibit No. 78.

(Thereupon the said document was marked Plaintiff's Exhibit No. 78 for identification.)

That in this memorandum Mr. Baird pointed out that:

"We must be sure, of course, that an enforceable contract is negotiated with Keeshin, and that the

same will guarantee continuity of service by Keeshin or his successor in the event the Keeshin Company decides to dispose of the business at some later date. The manner of settlement should also be plainly
1165 stated, the railroads involved in the contract settling on the basis of coupons presented and on which service has been performed."

That on May 31, Mr. Baird prepared a subsequent memo, this time addressed to Mr. Bone, which I will have identified as Plaintiff's Exhibit No. 79.

(Thereupon the said document was marked Plaintiff's Exhibit No. 79 for identification.)

In this Mr. Baird points out that the recommendation for Keeshin has been approved by Mr. Nickerson, and that the provisions outlined in the last paragraph of Mr. Baird's letter are necessary, and the contract finally awarded Keeshin should be clear with respect to each provision.

There is nothing further on Mr. Baird. I would offer these exhibits in evidence through Mr. Baird's identification.

By Mr. Keating: The same objection to this, your Honor.

By the Court: The same ruling.

1166 By Mr. Freeman: I would also offer in evidence the testimony of Mr. C. A. Fawcett, a resident vice-president of the New York Central Railroad who resided in Chicago, whose office was in Chicago, and he is now retired.

Mr. Fawcett's deposition was taken, and he testified that he did not play any part in the Chicago transfer negotiations, but after April 27, 1955 he did receive memoranda from Mr. Bone, copies of memoranda from Mr. Bone dealing with the Chicago transfer negotiations.

That on April 27 Perlman was in Chicago, and while walking through the station with Fawcett saw many Parmelee cabs, and this brought the matter of the transfer negotiations to Mr. Fawcett's mind, and he advised Perlman that passenger people were negotiating with Parmelee and Keeshin for the new contract.

Mr. Perlman said, "May the best man win."

Mr. Fawcett recalled something further.

Mr. Fawcett, when shown the April 27 memorandum of his conversation with Mr. Bone, denies that he made any such statement. He admits that he had a conversation with Mr. Bone on April 27, but he recalls nothing further about that and recalls no part of the memo-
1167 randum.

He doesn't even recall having read the memorandum, although a copy of it was sent to him.

Subsequently, Mr. Fawcett's diary shows a meeting with Mr. Perlman in Elkhart, Indiana on May 13.

This Mr. Fawcett described as having been recorded in his diary, because Mr. Perlman was passing by a train and waved to him while he was on the platform, so he recorded that in his diary, but he denied that he had any meeting with Mr. Perlman on May 13, 1955.

That Mr. Fawcett prepared or did send to Mr. Perlman an editorial, which appeared in the Chicago Daily News on January 20, 1956 entitled "The Cross Inquiry," with the notation, "Interesting"; and he sent this to Mr. Perlman, and I would identify it as Plaintiff's Exhibit No. 80.

(Thereupon said document was marked Plaintiff's Exhibit No. 80 for identification.)

By Mr. Freeman: I would like to have this marked as Plaintiff's Exhibit No. 81, the joint letter from Fawcett and Jenks to the Parmelee Transportation Company dated August 10, 1955.

1168 (Thereupon said document was marked Plaintiff's Exhibit No. 81 for identification.)

By Mr. Freeman: Mr. Fawcett would testify that on or about August 10, 1955 he or his counsel had prepared a joint letter of his and the then vice-president Mr. D. B. Jenks of the Rock Island Railroad, in view of the fact that the New York Central and the Rock Island Railroad were the joint owners of the LaSalle Street Station.

He would testify also that Mr. Jenks has subsequently become president of the Chicago, Rock Island and Pacific Railroad.

That in this letter Mr. Fawcett and Mr. Jenks stated to the Parmelee Transportation Company in connection with the cancellation of their contract:

"May we take this opportunity of expressing to the Parmelee Transportation Company, whose services and association we have enjoyed for so many
1169 years at LaSalle Street Station our respect for the organization and its historical affiliation with the railroad transportation industry in Chicago."

This letter was written on August 10, 1955, after we contend the conspiracy had resulted in the selection of Mr. Keeshin.

That is all I would have to offer through Mr. Fawcett.

By Mr. Keating: The same objection.

By the Court: The same ruling.

By Mr. Owens: Certainly, your Honor, with respect to that newspaper article, I can't see any relevance at all as part of a record of any kind of any basis.

By the Court: The objection goes to the whole thing.

By Mr. Freeman: I would seek to sustain the relevance of that and the competence of that information, but I see that your ruling was broad.

By the Court: Do you want to recess now until two o'clock?

By Mr. Freeman: I think that might be helpful.
By the Court: We will recess until 2:00 o'clock.

(Thereupon a recess was taken until 2:00 p.m., of the same day, Monday, May 2, 1960.)

1170 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Monday, May 2, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.
Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1171 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1172 (Thereupon the following proceedings were had herein:)

By The Clerk: Case on trial.

By Mr. Freeman: I believe I finished with an offer of proof of Mr. Fawcett.

I would also offer to prove through Mr. Sidney W. Bone, who in 1955 was general passenger agent of the New York Central Railroad and the managing agent under the statute, and who would be examined as an adverse witness, that he was chairman of the negotiating committee of six railroads established January 29, 1954, to investigate the possibility of reducing the transfer costs;

That these transfer negotiations were reported to Mr. Baird in New York City; that the New York Central Railroad was the largest transfer factor accounting for 22 percent of the transfer business;

That after the committee had various meetings with prospective contractors through 1954, then after having received Mr. Keeshin's proposal of December 1954, the committee met on January 5, 1955, and were of the opinion that Keeshin's proposal was not sufficient to change from Parmelee.

It was the concensus of the committee that a substantial reduction in transfer costs would have to be proposed before a change from Parmelee should be recommended.

1173 I would ask Mr. Bone and establish a series of notations that Mr. Bone made at these various committee meetings, commencing with January 5, 1955, and coded as New York Central 121 to 134.

Mr. Bone would identify these sheets as notations made in his handwriting during the committee hearings, and I would identify and offer in evidence these documents as Plaintiff's Exhibit 82.

(Thereupon said documents were marked as Plaintiff's Exhibit No. 82 for identification.)

By Mr. Freeman: On coded page New York 123, Mr. Bone in his handwriting would testify that he had noted that E. B. P., meaning Mr. Padrick, "has asked Parmelee to offer us their suggestion to improve service and transfer charge. J. L. Keeshin proposal at $1.20 is not sufficient to change from Parmelee. Railroad to be worse off account of loading trailers. A rate of $1.20 would be attractive."

On the following pages, page 125, there are notations made with respect to the Willett proposal and the remark underlying "Same price as now getting." On page 126, "Same price as now getting,"

Mr. Bone would testify that the Willett proposal
1174 was rejected because Willett offered the same price as the Parmelee contract;

That the committee then prepared a progress report, which has been previously identified in this record, January 5, 1955, and transmitted this progress report to all of the Chicago Terminal Lines in anticipation of a meeting to be held of the Chicago Terminal Lines on February 1, 1955.

The committee progress report was transmitted under a letter indicating that the committee had been established to study methods of getting a better price than we are now achieving. At the February 1st meeting of the Chicago Terminal Lines the committee's progress report was received and concurred in, and it was the concensus of the meeting that there should be no change from Parmelee unless a reduction of 10 to 20 cents in the transfer coupon rate was achieved.

1175 That a meeting with Parmelee's representative was held by the committee on March 17, 1955, to

consider a proposal presented by Parmelee under date of March 15. That Mr. Bone would testify that he does not recall having any conversation with Mr. Markin on that date at which Mr. Bone stated that the proposal submitted by the Parmelee Company was good, and that they had a deal.

On April 27, 1955, Mr. Bone would testify that Fawcett, the resident vice president, reported to him that President Perlman has asked about the Chicago transfer negotiations, but Mr. Bone would further testify that he doesn't recall anything else other than that remark, but that he did prepare a memorandum of his conversations with Mr. Fawcett, and that has been previously identified in this record as Plaintiff's Exhibit No. 76.

Further, that Mr. Bone would testify that the memorandum was accurate as far as it went, and that a copy of it was sent to Mr. Baird in New York and a copy to Mr. Fawcett.

Mr. Bone would further testify that he called various committee members on or about April 28, but he would deny that he informed these committee members that railroad presidents had been contacted by the transfer companies, and, as a matter of policy, they should have their top executive people present at the meeting.

1176

He would further deny that he did not advise Mr. Smart of the Illinois Central that Mr. Cross had contacted the Baltimore and Ohio, the Pennsylvania and the New York Central, and that Cross had a job opportunity with the Keeshin Company if they got the transfer contract.

Mr. Bone would further testify that he did not know that Mr. Whittington of the Baltimore and Ohio was going to attend the meeting, despite the fact that under Plaintiff's Exhibit 72 Mr. Smart reports Mr. Bone so advised him.

Mr. Bone would deny that he was not advised, that

Comer of the Pennsylvania would attend, and he so testified and denied it.

I would seek to have identified as Plaintiff's Exhibit No. 83, a memorandum from Mr. Bone's secretary to Mr. Baird dated May 17, in which he specifically notes that he was advised that Mr. Comer, of the Pennsylvania and Mr. Whittington would attend.

(Thereupon the said document was marked Plaintiff's Exhibit 83 for identification.)

1177 Mr. Bone would further testify and would deny that he was advised that Mr. Baird of the New York Central would not attend, and here again this denial would be in conflict with his own memorandum that has been identified as Plaintiff's Exhibit No. 83.

The committee met on May 19, 1955, and was augmented by various top passenger executives of the Baltimore and Ohio, the Pennsylvania, the North Western and the Illinois Central Railroads, and after hearing both Mr. Keeshin and Mr. Markin in the afternoon, the committee adjourned in order to get the views of the executive officers of these railroads.

1178 That Mr. Bone prepared several memoranda after this meeting, and the first of these memoranda is a three-page memoranda coded as New York 310 to 312 and marked for the purpose of identification as Plaintiff's Exhibit No. 84.

(Thereupon said document was marked as Plaintiff's Exhibit No. 84 for identification.)

By Mr. Freeman: Mr. Bone would testify that this memorandum was prepared after the May 19th meeting, that it was prepared in the ordinary course of his activities as chairman of the committee and as representative of the New York Central, that it was placed in the files and sent to Mr. Baird in New York and a copy sent to Mr. Fawcett.

That in the memorandum he attempts to summarize the respective proposals of Keeshin and the Parmelee company and notes that the rates proposed by Keeshin and Parmelee differ from the fourth, fifth and the sixth years;

That Keeshin proposed to handle his baggage on top of the station wagons; that Parmelee had compartments for baggage which protected the passengers.

That June 3rd was set for the date of decision, and Mr. Bone inquired in this memorandum.

1179 "Is that sufficient time for you 'to analyze the situation' and let me have the position of the company?"

That on May 20, the next day, Mr. Bone prepared a supplemental memorandum, and I ask that this document be marked as Plaintiff's Exhibit No. 85 for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 85 for identification.)

By Mr. Freeman: Mr. Bone would testify that Plaintiff's Exhibit 85 was prepared pursuant to a conversation that he had with Mr. Markin in which specific maximum rates were established for each year of the six years of the contract proposed by Parmelee, and this Exhibit 85, when read in conjunction with 84, would bring the respective proposals of Keeshin and Parmelee completely down to date.

That on May 23rd, 1955, Mr. Bone was called by President Perlman of the New York Central Railroad, and Mr. Bone would testify that he was asked what the situation was on the Chicago transfer, that he reported to Mr. Perlman that the bids had narrowed down between Keeshin and Parmelee and the Perlman said, "May the best man win," and that is all of the conversation

1180 that occurred, but that Mr. Bone would further testify that this was the first and only time in his entire history with this railroad that he had received a call from Perlman or any president of the railroad.

That Mr. Perlman did not bawl Mr. Bone out for leaking information to the bidders, and did not bawl him out that the bids were identical to the penny for each year for five years;

That on the same day, May 23rd, Mr. Perlman's assistant, Mr. Whited called Mr. Bone and asked him to present a copy of Parmelee's latest proposal; that pursuant to that request Mr. Bone transmitted to Mr. Whited on May 23rd a copy of the proposal, which I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit No. 86, and consists of two pages, the letter of transmittal and the proposal itself.

(Thereupon said document was marked as Plaintiff's Exhibit No. 86 for identification.)

1181 I would also prove through Mr. Bone that on May 23rd he assumed and believed that Parmelee would be continued with the transfer contract and, in fact, on May 23rd Mr. Bone addressed a letter to Mr. Nerland of the New York Central organization, in which he advised Mr. Nerland that the Parmelee Transportation Company will handle group movements between the terminals at the rate of fifty cents per capita, and he wanted Mr. Nerland to make the necessary arrangements to account for it.

That this memorandum of May 23, Mr. Bone requested be disregarded on June 28, 1955.

That the first letter of May 23rd I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit No. 87, and the second letter, which followed it up on May 23rd, 1955, and which contains a penciled

notation "F.B.I." who is Mr. Bone's secretary, saying, "Disregard—4:00 p.m., 6-28-55," having Mr. Bone's initial on it, as 87-A.

(The said documents were thereupon marked Plaintiff's Exhibits Nos. 87 and 87-A for identification.)

1182 By Mr. Freeman: Mr. Bone would testify that Exhibits 87 and 87-A were prepared in the ordinary course of business, and do contain his initial "B," indicating that he has seen these memoranda;

That on May 24, the day following Mr. Perlman's conversation with Mr. Bone, Mr. Bone addressed a memorandum to Mr. Baird, in which he says:

"I confirm our telephone conversation of today concerning the Chicago transfer situation,"

and expresses a recommendation in favor of Keeshin.

This memorandum I ask to be marked for the purpose of identification as Plaintiff's Exhibit 88.

(Thereupon said document was marked as Plaintiff's Exhibit No. 88 for identification.)

By Mr. Freeman: Mr. Bone would testify that this memorandum also was prepared in the ordinary course of business, but we would offer to prove through Mr. Bone that his recommendation for Keeshin was directed and instructed by Mr. Perlman as a result of his telephone conversation, the day before with the president of the New York Central Railroad.

By Mr. Thompson: There is nothing on which
1183 to base any statement that he is going to prove any such thing.

By Mr. Freeman: I have already put it in.

By Mr. Thompson: All the testimony is to the contrary.

By Mr. Freeman: There is no testimony to the contrary, your Honor, but I have made my statement.

Now further, Mr. Bone would testify that Parmelee acted promptly on all complaints; that Parmelee's handling of baggage and transfer in 1955 was generally good; that in the committee negotiations it was understood that Parmelee would always have the opportunity of presenting the last proposal;

That they were not dealing on the basis of competitive bidding, but that Mr. Padrick was to keep in touch with the negotiations and with Parmelee for the purpose of securing a proposal from them; that Keeshin's rates were possibly higher than Parmelee's;

That Mr. Bone, in his memoranda to New York, recognized that the rates proposed by Keeshin and Parmelee in the fourth, fifth and sixth years were different;

That Mr. Bone would testify that the committee under no circumstances would accept any verbal proposals, but insisted that all commitments by the prospective con-
1184 tractors be presented in writing; and that Keeshin did not advise the committee during the course of negotiations that he had any experience at all with the handling of passengers.

So much for Mr. Bone.

By Mr. Meserow: We want to make the same objection.

By the Court: Same ruling.

We will take a five minute recess.

(Thereupon a short recess was taken.)

1185 By the Court: Proceed.

By Mr. Thompson: In addition to the objection which Mr. Meserow made, which has been sustained, we are not repeating every time these things come in by document and what have you, but of course it is hearsay as to everybody except the author of the document and

the one on whose behalf the document is presented. So it is all hearsay as to all the rest of the defendants.

Furthermore, we want specifically in this instance to object to the form of the offer of proof. I have never yet heard of an offer where you say that a witness, if he is called to testify, will deny all this, but, and then say something else, which is— I don't know what you offer to prove when you prove a witness is going to testify directly to the contrary to what you want to prove.

Anyway, we object to the form of this. It violates the most elementary rule.

By the Court: Same ruling.

By Mr. Keating: Same ruling, your Honor?

By the Court: Same ruling.

By Mr. Freeman: Your Honor, I am assuming that I have expressly and specifically made an offer of these documents in evidence. I have included them in my 1186 offer of proof. But just to be clear about them, we have proceeded from Plaintiff's Exhibits 64 through 88, and I specifically offer those documents that I have identified in the offer of proof in evidence.

By the Court: Same ruling.

By Mr. Thompson: There is one document there which I haven't seen, but he says that it includes the Markin proposal or the Parmelee proposal of March 15, 1955.

Now, it was said earlier in the case that all of the proposals of Markin and Keeshin would be put in evidence. We have no objection to the Markin proposal of March 15, 1955, and to the supplement of May 20, or whatever date it was, if they are in fact the true proposals, though I haven't seen them. They are introduced here in the character of transmittals—

By Mr. McConnell: It is subject to check. Let him check them.

By Mr. Thompson: We will check them, of course.

Of course, as to Keeshin's proposals, we hope they keep their promise and put them in evidence so the two will be here of December 15, 1954, January 15, 1955, and April 6, 1955.

1187 By the Court: Well, the offer—

By Mr. Freeman: Excuse me, your Honor. Mr. Thompson is not quite correct and possibly—I did say that the Parmelee proposal was transmitted, but it was a description of it, not the proposal itself.

At the proper time I will invite Mr. Thompson's attention to the original proposals that came out of the railroad files, and I will put them all together, Parmelee's, Keeshin's, and the ultimate contract, and I think we ought to have an agreement that they should go in the record.

By the Court: All right. The same ruling in the meantime.

1188 By Mr. Thompson: Well, I meant that my objection to all these documents was hearsay except as to the one who prepared them. I think I have already said it, but I want to be sure about it.

By the Court: It is covered.

By Mr. Freeman: I would offer to prove through the testimony of Mr. A. E. Perlman, who in 1955 was president of the New York Central and remains president of the New York Central and is an adverse witness, president of one of the defendants here, that the New York Central Railroad is one of the largest railroads in the United States; that the president has to determine and decide problems of finance, operations, real estate development of tremendous magnitude;

That Mr. Perlman became president in 1954, after a proxy fight; that one issue in the proxy fight was submitted to the Interstate Commerce Commission for determination;

That he received no material regarding the Chicago transfer issue except a memorandum from Mr. Bone on May 23, 1955, or dated May 23;

That he was in Chicago on April 27, 1955, and Mr. Perlman would testify that while walking through the La Salle Station he saw many people waiting for
1189 transfer service, and he asked Mr. Fawcett, with whom he was walking, what was the matter, and was told that the transfer contract was up for bidding; that Mr. Perlman said that was fine. That is all that Mr. Perlman would remember and testify to.

That he remembers that he had several conversations and meetings with Mr. Nickerson, his vice-president, and asked Mr. Nickerson when the transfer situation would be closed;

That he was advised that the Parmelee bids and the Keeshin bids were identical to the penny, step by step, for five years, and pursuant thereto he called Mr. Bone on May 23 to "bawl Bone out" for leaking information to these bidders which resulted in identical bids to the penny for each step of the five years;

That Mr. Bone stated to him over the telephone, pursuant to this bawling out, that the bids were identical to the penny;

That Mr. Perlman had a meeting with Mr. Forgash of the United States Freight Company and a subsidiary of the New York Central on May 24, in the morning, in his office in New York;

That Mr. Perlman had various meetings with Mr. Simpson of the Baltimore and Ohio, one on April 21 in
1190 New York City, two on April 29 in Washington, D.C., one on May 4 in New York City, one on May 19 in New York City, one on May 27 in New York City.

Mr. Perlman would testify that he doesn't recall whether he had a conversation with Mr. Simpson and whether

Mr. Simpson advised him of the Chicago transfer negotiations and of the intervention of Mr. Cross, but Mr. Perlman emphatically denies that he had any such conversation with Mr. Carpi of the Pennsylvania Railroad.

1191 That is all for him.

By Mr. Keating: Same objection, if your Honor please.

By the Court: Same ruling.

By Mr. Freeman: I would now proceed with an offer of proof in connection with the Pennsylvania Railroad. I would first offer to prove through Mr. Fred Carpi, who in 1955 and today was vice president in charge of traffic for the Pennsylvania Railroad, that Mr. Carpi would testify that this was a very important vice presidency, and he had charge of four substantial divisions of the Pennsylvania.

That the Pennsylvania Railroad is one of the largest railroads in the world and did a business in 1955 of $934,000,000 in gross.

That Mr. Carpi receives reports from all of his departments orally, that he doesn't receive any written memoranda, and that he doesn't bother to keep records.

That he had a contact—that he knew Cross only slightly before he became Chairman of the Interstate Commerce Commission; that Cross called Carpi for an appointment and did come to Philadelphia, possibly on a Saturday, but certainly the latter part of April.

1192 That Cross called Carpi on the telephone a number of times in the spring and summer of 1955, and that Carpi met with Mr. Hugh Cross four or five times in 1955.

That at no time did Mr. Carpi prepare a memorandum of these meetings or talks with Cross or discuss these talks with other people at the Pennsylvania.

Carpi claims in his testimony that these conversations were largely about clean cars and car supply; that his conversations were with Cross because he was Chairman of the Interstate Commerce Commission, and Mr. Carpi testifies that he always talks to the Chairman and only to the Chairman.

That Mr. Cross in his telephone conversation had said he was quite concerned that the Pennsylvania Railroad might go under water in a depression, and therefore called Mr. Carpi to discuss the financial condition of the Pennsylvania Railroad with him, and that was one of the principal subjects of their telephone conversations.

That Mr. Carpi did have a memorandum prepared, and the first memorandum and only memorandum in Mr. Carpi's files dealing with any conversation with Mr. 1193 Cross is dated October 6, 1955, and I ask that this be marked for the purpose of identification as Plaintiff's Exhibit No. 89.

(Therefore the said document was marked Plaintiff's Exhibit No. 89 for identification.)

That Mr. Carpi would testify that there were no memoranda in the Pennsylvania files in Philadelphia during the period from February 1, 1955, to June 15, 1955, bearing on the Chicago transfer negotiations, but on June 15, 1955, he received a note from Mr. Comer, his general passenger traffic manager in Philadelphia, saying:

"Holt did a good job re the transfer in Chicago. A note from you is in order."

On the next day Mr. Carpi sent Mr. Holt in Chicago a congratulatory note saying:

"It is quite obvious you have done an outstanding job in connection with the new transfer arrangements at Chicago for which I should like to extend my sincere thanks and congratulations."

1194 I ask that these documents be marked, for the purpose of identification, as Plaintiff's Exhibits 90 and 91.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 90 and 91 for identification.)

By Mr. Freeman: That Mr. Carpi would further testify that during this period in the spring and summer of 1955, the Pennsylvania Railroad had cases of primary importance pending before the Interstate Commerce Commission, including the purchase of the Toledo, Peoria Western Railroad jointly with the Santa Fe Railroad, an increase in coal rates of 35 cents, sometimes known as the coal roll-back case, a case involving per diem car rental cases in which the Pennsylvania was one of the principal participants, and other matters of that character.

That is all I would have on Mr. Carpi.

By Mr. Thompson: We object here to the form of the offer, and we also object to the documents as hearsay as to everybody excepting the people involved, and that they are wholly irrelevant to any issue in this case, and we challenge the good faith of the representations as

1195 to what Mr. Carpi would testify to, and his deposition will not bear it out.

By the Court: The same ruling.

By Mr. Freeman: I offer to prove through Mr. E. R. Comer, the general passenger traffic manager for the Pennsylvania Railroad and located in Philadelphia, that Mr. Comer would testify he was not a member of the Chicago negotiating committee or the Chicago Terminal Lines, but that he did attend the May 19th meeting of the committee and the May 3rd meeting in 1955, and that these were the first meetings that he ever attended in his relationships with the railroad.

That he was invited to attend this meeting by Mr. Holt.

That he did not have any prior discussions with Mr. Holt, he would testify, concerning the Chicago transfer negotiations, but that he reported to Mr. Carpi and did have conversations on the Chicago transfer issue with Mr. Carpi.

Mr. Comer would likewise testify that it was the practice of the Pennsylvania Railroad not to prepare any written memoranda, and that there were no written reports from Comer to Carpi or from Holt to Comer and Carpi, that the files—that the passenger traffic files
1196 in Philadelphia show a gap of papers from February 1, 1955 to June 3, 1955, but that on June 7, 1955 Comer did write a memorandum to Holt requesting a prompt report on the June 13th committee meeting, and on June 14 such a report was presented.

That this request for a report and the report itself were not found in the files in Philadelphia, but were found in the files in Chicago.

I will mark, for the purpose of identification, as Plaintiff's Exhibit 92, this request for report dated June 7, and as Plaintiff's Exhibit 93, Mr. Holt's report of June 14.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 92 and 93 for identification.)

1197 I offer in evidence the documents that have been marked under the offer of proof in the case of Carpi and Comer.

By Mr. Meserow: Same objection.

By the Court: Same ruling.

By Mr. Freeman: I would also offer to prove through the deposition of Mr. Richard A. Clare, a deposition

that we took in Philadelphia, that Mr. Clare is the assistant manager of passenger sales of the Pennsylvania Railroad, and Mr. Clare would testify that Mr. Holt regularly and as a matter of normal routine prepared reports to Comer and Carpi in Philadelphia on the Chicago transfer negotiations.

That Holt kept Comer advised of everything of sufficient interest that was occurring. That Clare did not have any conversations with anyone about the Chicago transfer situation, but may have seen letters and reports on the subject.

That it was the practice of the Pennsylvania Railroad to procure written memos in multiple copies for the various officers, and that there was no policy against writing memoranda.

I would like to have marked for the purpose of identification as Plaintiff's Exhibit No. 94, this 1198 memorandum coded as P-38-A.

(The said document was thereupon marked Plaintiff's Exhibit 94 for identification.)

That Mr. Clare would testify he had prepared a memorandum to his superior, C. W. G., who is Mr. Getty, which has been identified as Exhibit No. 94, that included in this memorandum is a reference to "return to R.H.C." who is Mr. Clare, "6-13, short resume of Keeshin and Parmelee proposals."

That this short resume could have come from Holt, but the resume could not be found in the files, and that is all I will offer to prove by Mr. Clare.

By Mr. Meserow: Same objection.

By the Court: The same ruling.

By Mr. Freeman: I offer to prove by Mr. Holt, the general passenger agent of the Pennsylvania Railroad—I have no proof, no offer of proof of Mr. Holt, so strike that.

By Mr. Thompson: I want to add to Mr. Meserow's objection that we object to the last two offers on Comer and Clare, and we challenge their good faith.

By the Court: The same ruling.

By Mr. Freeman: I believe we have a stipulation, but in any event, I would like to offer, by agreement,
1199 the Parmelee proposal of March 16, 1955, which was found in the Association's file and coded as A-548 through 551, previously identified as Exhibit 9 in the Padrick deposition and the Parmelee supplemental proposal of May 20, 1955, and also found in the same location as A-547, signed by—

By Mr. Thompson: What numbers are they?

1200 By Mr. Freeman: If you will agree, I will identify them as Plaintiff's Exhibit 95, for the March 15th proposal, and Plaintiff's Exhibit No. 96 for the May 20th proposal, and if Mr. Thompson will wait a minute, I will identify a few others that I think we can agree upon.

By Mr. Thompson: If the Court please, we are not permitting evidence by stipulation or agreement, but if they offer them we do not object.

By Mr. Freeman: I am always amazed, but in any event we are offering those two exhibits, and then these four additional ones.

There is the proposal of Mr. Keeshin of December 15, 1954, which was secured from the Association files and coded as A-165 through A-179, which I would have identified as Plaintiff's Exhibit No. 97.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 95, 96 and 97 for identification.)

1201 By the Court: If there is no objection, they may be received in evidence.

By Mr. Owens: The general objection stands that they are limited to this offer of proof.

By the Court: I didn't hear that?

By Mr. Owens: The objection is that they are limited to this offer of proof.

By the Court: No, I think when they are received in evidence, they are received for all intents and purposes.

By Mr. Freeman: They are received.

By the Court: I would say in reply that that is directly in issue.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 98 a letter from Mr. Keeshin to Mr. Bone dated January 15, 1955, coded A-647, and Plaintiff's Exhibit 99, a three-page letter from Keeshin to Bone dated April 6, 1955.

(Thereupon the said documents were marked Plaintiff's Exhibits 98 and 99, for identification.)

By Mr. Freeman: Mr. McConnell suggests that we limit these documents to the issue of conspiracy, and with that limitation I assume that counsel would 1202 have the same objection, and then possibly you would want to reconsider your ruling.

By the Court: These documents you admit are on the issue of conspiracy?

By Mr. Freeman: Yes.

By the Court: Not on the issue—

By Mr. Freeman: We are proposing them on the issue of conspiracy.

By the Court: All right. Same objection and same ruling stands.

By Mr. Thompson: Of course, we would object to the form of any such bob-tailed offer. If they offer the documents subject to checking the documents for accuracy, we make no objection to their being received in evidence.

By Mr. Freeman: Of course, we offer these documents subject to them being checked for accuracy, and I might point out to your Honor that all of these documents are photostated copies of pages taken out of the railroad files.

By the Court: Let me get this straight. You say subject to accuracy, there is no objection to their admissibility.

By Mr. Keating: Will he reiterate what the purpose of his offer is?

1203 By the Court: Counsel offered them strictly for the purpose of proving the conspiracy.

Judge Thompson, as I understand, said subject to accuracy, he makes no objection to their admissibility. Is that right?

By Mr. Meserow: I make objection to them if they are offered for the conspiracy purpose. The same objection.

By Mr. Keating: They have nothing to do with the issue before the Court.

By Mr. Meserow: Nothing relevant to the issue before the Court.

By Mr. Keating: If it is on the conspiracy.

By the Court: On the question of conspiracy, if it is a limited offer, I will sustain the objections.

By Mr. Freeman: Your Honor, I have two additional exhibits in this same category, namely, Plaintiff's Exhibit 100, which is a copy of the final contract executed between Mr. Padrick as agent for the railroads and Mr. Keeshin, dated as of October 1, 1955, but actually executed September 16—no, there is no date indicated of execution—together with the transmittal letter of September 27, 1955, from Mr. Padrick to the terminal lines.

This document and the transmittal letter have 1204 been procured from the Association files and is coded A-467, the contract itself being uncoded.

(Thereupon the said document was marked Plaintiff's Exhibit 100 for identification.)

1205 By Mr. Meserow: This is being offered on the conspiracy proof?

By Mr. Freeman: In the limited way I have suggested.

By the Court: This is the precise contract?

By Mr. Freeman: The final contract.

By the Court: Between Keeshin and the railroads, and you are offering it?

By Mr. Freeman: Yes, to prove the conspiracy, in that limited way.

By Mr. Meserow: Same objection, your Honor.

By Mr. Thompson: We object to any limited offer of the document. If they offer the document, we have no objection to the document being received in evidence subject to checking and also to having the complete document. This apparently is some bobtailed document.

By the Court: If there is no objection, I will receive it in evidence.

By Mr. Meserow: I object, your Honor. The same objection. The purpose of the offer is for conspiracy purposes, and it is not within the issue being tried by this Court. On behalf of my clients, I object to it.

By Mr. Freeman: Your Honor, it isn't a bobtailed offer, as Mr. Thompson would have you believe. It 1206 is the whole contract and it is the best copy we have. There are other copies that may be better than this, but in any event—

By the Court: I will receive it in evidence as far as Judge Thompson is concerned, and I will sustain it as far as Keeshin is concerned.

By Mr. Freeman: Then I also would like—

By the Court: What about Mr. Cross?

By Mr. Thompson: I object to the limited offer. If it is just offered in evidence, I have no objection to it. I

object to the limited offer. I am not going to have it offered and received as evidence only of the conspiracy.

By the Court: I didn't say that. I said I will receive it in evidence, if you make no objection to it, not in a limited way, but in evidence.

So far as their objection is concerned, I can't stop them from objecting, but if there is no objection it will be received in its entirety for all purposes because I can't accept the very essence of a deal, the contract, as limited to a conspiracy on the issue, the very meat of it before me.

By Mr. Thompson: If your Honor please, that is the only way they offer it, is as evidence of the conspiracy.

Now we object to any such bobtailed offer.

1207 If they want to offer it generally, then we will—

By the Court: I will sustain the objection if it is made to conspiracy only.

By Mr. Thompson: That is what they said.

By Mr. Freeman: That is what we did say.

By the Court: I thought you said you did not make an objection to its entirety.

By Mr. Thompson: I am sorry I didn't make myself clear.

By Mr. McConnell: If the Court please, the Court very graciously, I thought, pointed out to us so that we wouldn't be under any inadvertence about it, that there might be in some of these depositions evidence which would not go to the conspiracy issue, but might go to a comparison between this and that and the other thing.

By the Court: That is correct.

By Mr. McConnell: On that, we simply want to advise the Court that we are not going to offer—there are portions in there that would, but we are not going to offer them because of our own general overall contention that the issues—

By the Court: I didn't require you to offer them, Mr. McConnell.

1208 By Mr. McConnell: I understand.

By the Court: All I want is the record to show that I am not blindly excluding something that may have relevance to the issues, and the burden is on you to point out to me those parts which are relevant, if there are any, and if you want to, I will reconsider it, that is all.

1209 By Mr. McConnell: We recognize that, and we appreciate your courtesy in pointing it out to us, but we are not going to offer them.

By the Court: All right.

By Mr. Freeman: Your Honor, my next offer of proof has to do with the matter of damages, and I have assumed from your Honor's statement that this entire line of proof will be rejected at this stage.

By the Court: I don't know what it is.

By Mr. Freeman: I have Mr. Andrews here, who is our accountant, and I would call him to the stand.

By the Court: You say you understand that I would reject evidence on the question of damages?

By Mr. Freeman: At this time, damages to Parmelee; in other words, injury to Parmelee.

By the Court: Oh, you are talking about the accounting now, the covering—

By Mr. Freeman: That is right.

By the Court: Oh, yes, definitely that I will not include at this time because it is not part of the issue before me.

By Mr. Freeman: Yes, rather than to make an elaborate attempt to present—

By the Court: I might add, if I may, Mr. Freeman, that on that score, I think even if we had all of

1210 the issues before the jury, I would expect an accounting to follow a decision one way or the other,

not in the same time before the jury on an accounting. I think that would be the law.

By Mr. Thompson: This is so obviously irrelevant and immaterial to the issue—

By the Court: We understand each other.

By Mr. Thompson: The authorities I have read show there should be no offer of proof of any such character. We object to any offer of proof on the element of damages.

By Mr. Freeman: Your Honor, we have only this problem. In our opinion, Mr. McConnell's, Mr. Lazarus' and myself, in our opinion in order to establish a breach of the anti-trust laws, it is necessary for the plaintiff to show that they had some injury.

By the Court: I have no objection to your making a brief offer of proof.

By Mr. Freeman: I want to do this in the most telescopic way I can so that this element of our case is before you.

By the Court: I have no objection to your making that offer of proof.

By Mr. Freeman: I would offer to prove through
1211 Mr. Fred Andrews, a certified public accountant, who was independently engaged to make this analysis for and on behalf of the Parmelee Transportation Company, and who has been engaged spasmodically, that is, on and off for the last two years, and has spent considerable time in the last few months in this connection;

Mr. Andrews would testify that the Parmelee Transportation Company suspended most of its operations on October 1, 1955; that it attempted to conduct some form of transfer operation from October 1, 1955, until May 1957, when it completely suspended its operation;

That during the period from October 1, 1955, to May 1957, the company suffered losses of some $520,000;

That Mr. Andrews prepared a summary of revenues and expenses realized by the Parmelee Transportation Company from the Chicago Railroad Transfer Service operations, and would present to the jury and your Honor a schedule summarizing this experience over the ten-year period from 1946 through September 30, 1955.

I ask to have marked for the purpose of identification this schedule as Plaintiff's Exhibit 101. I will
1212 give counsel a copy, and if they need additional copies, I will furnish them.

(Thereupon the said document was marked Plaintiff's Exhibit 101 for identification.)

By Mr. Freeman: I would also offer through Mr. Andrews a statement summarizing the income and expense experience of the Railroad Transfer Service, Inc., from October 1, 1955, through December 31, 1959. I ask to have marked and offer in evidence as Plaintiff's Exhibit 102 this statement of summary of income from Railroad Transfer Service, Inc.

(Thereupon the said document was marked Plaintiff's Exhibit No. 102 for identification.)

By Mr. Meserow: Do you have a copy of this?

By Mr. Freeman: I will give you copies of all of these things. I am only handing your table one copy now, but I will have additional copies of these two statements if you want them. It is just a matter of convenience at this point. I don't have the copies right here before me.

I would also offer to prove through Mr. Andrews that the present owners of the Parmelee Transportation Company acquired the stock in 1929 and paid for good will over and above the physical assets of the company
1213 the sum of $1,322,000.

I would offer to prove through Dr. Herbert B.

Dorau, who resides in Bridgewood, New Jersey, and who is a professor of economics and chairman of the Department of Public Utilities and Transportation in the School of Commerce, Accounts and Finance at New York University; that he has been professor in the graduate School of Business Administration in New York University;

That he is the author of a number of books and articles on various aspects of the rate of return problem and the question of the value of earnings in determining the value of properties;

That in 1936 to 1938, he made a detailed analysis of the reports of the Federal Trade Commission investigation of utility accounting and financial practices;

That during the years 1928 to 1932, he was engaged in the field of investment analysis and assisted in the financing of public utility enterprises in connection with investment banking and commercial banking concerns;

That he has acted as consultant to the New Jersey Board of Public Utility Commissioner; and has served on the Port Protection Committee of the New York Port Authority;

1214 That during 1930 and '31 he was a member of President Hoover's Committee on Housing and Home Ownership;

That he is a member of the American Accounting Association, the Controller's Institute of America, the American Institute of Real Estate Appraisers, and the American Society for Traffic and Transportation.

He would testify that he has appeared in a professional expert capacity one or more times before the Public Utility Commissions of Alabama, Arkansas, Oklahoma, Kansas, Louisiana, Illinois, Pennsylvania, Indiana, Virginia, Ohio, New York, Utah, West Virginia, Kentucky,

Maryland, Massachusetts, Vermont, New Hampshire, Maine, Missouri, Rhode Island, New Jersey, Florida, Wisconsin, California, Washington, Oregon and the District of Columbia, and also before the Dominion Board of Transport in Canada;

That he has also appeared before the Federal Securities and Exchange Commission, the Interstate Commerce Commission, and the Federal Power Commission on a number of occasions;

That he has appeared by invitation before professional societies and read various papers on utility valuation problems, including the Technical Evaluation Society, the American Institute of Real Estate Appraisers,
1215 the Edison Electric Institute, the Pacific Coast Gas Association, and the American Bar Association, the Life Insurance Investment Officers Institute of the University of Indiana, at the University of Chicago, at the University of Florida, the Harvard Law School and the Pennsylvania Bar Association.

1216 That he has appeared in a number of transportation cases before the Commissions in Pennsylvania, New York, New Jersey, Massachusetts, Illinois and Indiana;

That he has also been engaged by the eastern railroads to appear on their behalf in the Ex Parte 175 surcharge cases, and has appeared in the matter of the Keeshin reorganization in the United States Federal District Court in Chicago as a consultant to determine the valuation of that enterprise;

He has been most recently engaged by the eastern railroads in the transcontinental freight rate division case which was before the Interstate Commerce Commission in 1955.

Dr. Dorau, on the basis of his experience, would be qualified as an expert to appraise the value of the earn-

ings that Parmelee was denied by reason of this conspiracy and in sum, without my reading various parts of his opinion, Dr. Dorau would render the opinion that the average earnings of the Parmelee enterprise during the last ten years should be multiplied by a factor of 11.11 or capitalized at nine percent as a determination of its value.

May we have a recess? We may be through.

1217 I assume they have an objection to this.

By Mr. Meserow: May I make an objection?

By Mr. Thompson: We certainly do.

By Mr. Meserow: If the Court please, I am going to object to the offer of proof with respect to Mr. Andrews' testimony and Professor Dorau and to Exhibits 101 and 102, Plaintiff's exhibits, for the reason that they are not material to the issue of public injury, and for the reason that they have not complied with Rule 43.

The witness did not get on the stand and testify, and there were no depositions taken of these two witnesses. Their offer of proof is therefore objectionable.

By Mr. Thompson: We object to the form of the offer of proof and to the fact that there is no proper foundation laid for the offer, and we also object on the ground that it is utterly immaterial to the issue of liability even in the broadest sense, and it is immaterial to this issue of public injury in any sense.

If this were a personal injury case and the issues were separated, one, in order to recover damages in a personal injury case, must prove damages, but you certainly wouldn't receive any evidence of damages on an issue of liability. Under the most elementary appli-

1218 cation of the rule of separation of issues you would not receive any such evidence as this.

Now the defendants have a counterclaim here which they propose to prove at some stage, but as I understand

it that will be continued because we can't try it now. As I understand it, there is another counterclaim. Now those issues, I would assume, were going to continue for further consideration at an appropriate time. But to even have this offer of proof made which is violative of the most elementary principles of a proper offer—

By the Court: I agree with you, Judge Thompson, but counsel asked as a special consideration, as a prerequisite to a right of cause of action, they must make some form of an offer, and I have no objection to it going in for that purpose. I exclude it entirely as irrelevant and immaterial to the issue before me. That is reserved under any condition until a future time, if and when.

I will let the offer stand as you gave it, and I will sustain the objection and strike it from the record.

All right, we will take a fifteen-minute recess.

1219 By Mr. Freeman: We may be through.

By the Court: You talk it over. Fifteen-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1220 By Mr. McConnell: May it please the Court, we have nothing further to offer on behalf of the plaintiff.

By the Court: The plaintiff rests?

By Mr. McConnell: The plaintiff rests.

And Thereupon The Plaintiff Rested Its Case In Chief

By the Court: All right, we will give the defendants, in the light of the ruling on the limited issue and in the light of the objections on the various offers of proof, if counsel for the defendants wants until tomorrow morning to figure it out, I think you are entitled to it, and I want

you to have that time so that you will not be expected now to determine what your next step is.

I know what is troubling you. You have expressed it. I have ruled upon it, and I want you to give it due consideration.

Is that what you would like to have?

By Mr. Thompson: Yes, your Honor.

By Mr. Meserow: I think so, yes.

By the Court: I would like to ask one question. That offer of the Keeshin contract in your offer of proof, would you or would you not put into the record the one
1221 question of whether or not that is the contract mentioned in the two cases before the Court of Appeals and the Supreme Court that was filed with the Commerce Commission?

By Mr. McConnell: I don't know what that proceeding is.

By the Court: Is my question clear?

By Mr. Freeman: I understand what you have reference to. Your Honor, I will say for the record because it is a fact, that the contract that was identified as, I think, Exhibit No. 101—

By the Court: The original, the real Keeshin contract.

By Mr. Freeman: That is the contract that was executed by the railroads and Keeshin on September 15, and it was an exhibit in the case of the Atchison, Topeka and Santa Fe vs. The City of Chicago, the case that went from Judge LaBuy to the Court of Appeals and ultimately to the United States Supreme Court.

That contract was an exhibit to the complaint in that case. The issue involved there did not involve the contract, however.

By the Court: What I meant to say was a step further. I know it was the contract, but I think the decision says,

". . . and filed with the Interstate Commerce Com-
1222 mission." I am not quite clear on that.

By Mr. Freeman: I know that the contract was filed with the Commerce Commission, and I am willing to accept the statement from the Railroad Transfer Company if they filed it with the Commission, and I don't know that.

By the Court: I don't recall the decision. I will have to read it again. I know they referred to it as having filed it somewhere.

By Mr. Freeman: Let me read the decision on that and advise you in the morning.

By the Court: Very well.

10:15.

(Thereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Tuesday, May 3, 1960, at the hour of 10:15 o'clock a.m.)

1223 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, May 3, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.,

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

1224 Mr. John J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1225 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin. The case on trial.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Thompson: If the Court please, counsel for the several defendants have conferred in this matter and have examined the record of testimony that is before the Court on the issue which the Court has set for trial and have reached the conclusion there is no evidence in support of the issue of public injury.

Accordingly, I am authorized by the attorneys who are of record for the defendants we do not represent, and I on behalf of the clients I do represent, move for a direction to the jury to return a finding that there is no proof of public injury, in other words, to return a finding for the defendants, and that the Court enter judgment on that finding for the defendants and against the plaintiff.

1226 As the grounds for our motion we state that there is not in the evidence offered by the plaintiff and

received by the Court any proof that the public has suffered any injury by virtue of the awarding of the contract to the Railroad Transfer Service, Inc., which was organized in the summer of 1955, and the contract formally awarded in September of 1955.

We submit that whatever evidence there is in the record on this subject, as offered by the plaintiff, shows that it was to the interest of the public to have the service that was provided by the new contractor.

1227 The public was given new equipment for its use. The passenger vehicles were air conditioned in the summer and heated in the winter.

The vehicles, both passenger and baggage, were dispatched by radio, and the stations were not only manned with passenger agents and baggage agents as they had been in the past, but there was added the service of the stewardesses who were there to give information and direction to the passengers who came into these various stations, and the matter of the difference in the continuity or stability of the service is something of great importance to the public in that it could depend on a continuity of it.

Mr. Keeshin, so the evidence shows, represented to the contracting railroads that he had a firm contract with labor for a three-year period, which assured a continuity of the service for that period as far as labor relations were concerned, and that he had the assurance that there would be peaceful labor relations during the period of his contract.

Mr. Markin, speaking for the plaintiff, at the same time said that the matter was, that an agreement with his

1228 employees still as late as May was still a subject of negotiation, that he did not have any contract with labor following July 1, 1955.

The evidence also shows that he did not arrive at an agreement with his people, so far as 1955, as far as he

year beginning July 1, 1955, until along in September, and that was in 1954, I believe, I am speaking of now, but in 1955 he said he didn't have any agreement.

1229 We think all of these things, if they proved anything, proved that the public was benefited and not injured.

We fail to find in the record any evidence that the public was injured by the granting of this contract to the Keeshin company.

I think the evidence shows—it is very difficult to know what it shows and what it doesn't show. As I remember, it shows that there was no existing contract with the plaintiff company following July 1, 1955. In other words, their oral contract or operating agreement expired on June 30, 1955 so far as there was any agreement.

In any event, it is our judgment there is no evidence in this record supporting the case that has been offered and received, and that judgment should be for the defendants severally.

By Mr. McConnell: May it please the Court, I am not going to attempt to answer Judge Thompson's recitation of evidence.

It was our contention at the beginning and all through the case and it still is that whether or not there is an issue of public injury—and we have very serious doubts about that—if there is such an issue that a public

1230 injury in an anti-trust case is defined by the Congress, and that anything that violates the Anti-Trust Act is inimicable to the public and to the public's interest, then the public is necessarily injured and damaged thereby.

It has been our contention that in an anti-trust case all that is necessary to show is that there is a substantial segment of interstate commerce that is involved; that there is a conspiracy or contract to restrain such com-

merce and to exclude competition therein; and that the complaining party who is the victim of the conspiracy is damaged thereby.

Those are the classic elements of an anti-trust case. I am not speaking academically. I have tried quite a number of these cases in the trial courts and the Courts of Appeal.

Those have been the classic issues up until this case. Of course, as far as I am concerned, when the court that I am before speaks and says the law is different, why, for the moment, at least, that is the law. Still, we have to make a record in our case.

1231 Now we have contended that an issue before this jury, even if we divide up the issues on the area of public injury, is whether or not there is a violation of the anti-trust laws. That we were prepared to prove when we came into this court. We were prepared to prove that there was what we contend a very vicious conspiracy here to deprive the plaintiff in this case of competing for this business in interstate commerce.

Offers of proof have been made along that line. I haven't wanted to clutter the issue with what I consider, as counsel for the plaintiff, matter to be irrelevant to the issue. In other words, we feel if someone in the course of a conspiracy excludes a competitor and gets the business, whether or not he does the business better or worse or equally well, is of no concern under the anti-trust laws; that the real injury to the public is the exclusion of competition.

That issue we have not been permitted to try, and that issue we contend should have been properly before the jury. We contend that we have not had a trial by jury in that issue of this case.

For that reason I don't want to clutter up that issue by entering into a detailed discussion of this evi-
1232 dence.

Your Honor indicated at the beginning, at the outset, and I expressed agreement, that if that was going to be your ruling, that we wanted it so clear in this record that there could be no dispute as to what the issue was.

By the Court: Will you permit me to ask a question, Mr. McConnell?

By Mr. McConnell: Yes.

By the Court: I was not in accord with Judge Thompson's statement that there is nothing in the record of public injury. The fact that he related both sides of the question in claiming that it is a betterment or improvement still leaves some issues for the jury to decide.

Are you still of the same opinion, when you started this case, when you told the Court and the jury—I am not sure about the jury, but you told the Court, for the record, that you do not intend to offer any evidence on the increase in rates or impairment in service?

By Mr. McConnell: No, we haven't offered any evidence.

By the Court: You have not offered any evidence on that.

By Mr. McConnell: We have offered evidence on
1233 conspiracy and what we consider to be a prima facie case of the violation of the anti-trust laws. That is the issue we raised and sought to prove.

I feel that the issue that has been raised here—it doesn't do me any good to reiterate it, your Honor. I have said it and said it.

By the Court: No. I will repeat again, so we understand each other. I am prepared to hold, and I think this jury ought to make a finding as to whether or not there is a public injury. That is the purpose of the jury having been selected, and that is the issue before it.

1234 I much prefer to have it go to the jury on that issue. Unless you concede, as you have indicated now,

that there is nothing in the record to show an increase in rate or impairment in the service—impairment is not the word—inferiority in service.

Now let me go a step further, and let me give you my thinking for the record.

I am firmly of the opinion, and I have read the cases and I have listened to the argument of counsel, and while this issue before the jury is a vital issue, from all of the record before me, not on the pleadings—I am not passing upon the sufficiency or insufficiency of the pleadings. I am not trying to review Judge Sullivan's judgment in the case. But from all of the cases before me, including the two Santa Fe cases which were appealed from Judge LaBuy, went to the Court of Appeals of our own circuit, and finally the Supreme Court of the United States, from all of the law before me now, I am prepared to hold, and I intend to hold, irrespective of the jury's finding in this case, even if they should bring in a verdict of public injury—I am going to discuss that in a few minutes—in my judgment on the proof before the jury, I would dismiss the jury and I would hold that this case does not
1235 belong in the family of anti-trust cases under any conditions, from the entire record before me.

If the plaintiff has any grievance in this case arising out of improper or allegedly improper award of the contract, it was never intended by Congress, it was never intended by our courts, to bring that type of a controversy into the family of anti-trust law.

It is a quarrel between two individual corporations, the Parmelee and the Keeshin company—I don't even remember the name. It is Railway?

By Mr. Meserow: Railroad Transfer Service, Inc.

By the Court: Railroad Transfer Service, Inc.

While there may be, in the first place, the issue in the pleadings was complete, as I pointed out, in my initial

statement which I read, that the plaintiffs charge in their complaint public injury. The defendants have met it by denial, and therefore it brings it clearly within the province of the Court and it is properly before the jury.

1236 Secondly, even if it were not so pleaded or even if it were not so emphatically and specifically pleaded it would have to be proven in any event before the plaintiff could be entitled to the right to recover, but in no event, and I am prepared to follow the many decisions, and I intend to write an opinion on it, that on that score—from the evidence and not from the pleadings has it differentiated from Judge Sullivan's ruling, and that is where all the line of cases come in that you have cited, where the courts have held in the Klor case and the Rogers case and a few other cases that you don't have to spell the thing out.

Where there is a specific violation, the Congress has defined it, and we are bound by it.

This is not the case. It doesn't involve any competitive parties. It doesn't involve any curtailment in commodities or in marketing. It has always been in the hands of one corporation.

It is in the hands of one corporation now, and there was no change in it, and the Courts have held clearly, and I get it from your own briefs, that the railroad companies, all of them, have a right to act concertedly in the awarding of this type of a contract, and that they can give

1237 it to one company, and it is not in violation of any anti-trust law.

Secondly, that has been decided since Judge Sullivan ruled in this case, in this very case, in which the plaintiff is bound, namely, the Atchison, Topeka case in which they intervened, even charged they inspired and instituted it, but that is of no consequence and no importance because they intervened and they are of record, and in those

cases the courts have held unquestionably that this matter of rate and service is within the Interstate Commerce area and jurisdiction, and the City of Chicago can not meddle.

I asked the question yesterday whether or not the new contract was filed with the Interstate Commerce Commission, and I don't have that on the record.

By Mr. Meserow: It was filed with the Interstate Commerce Commission and the Illinois State Commerce Commission.

By the Court: The only inference I have, if I am properly quoting it, is from the United States Court of Appeals and the U. S. Supreme Court Decision. I have no other information except for that.

I am bound by it, because it is part of the record.
1238 Therefore, in addition to holding it is not within the area or the family of anti-trust, it is a matter for the discretion and the judgment of the Commerce Commission and not for the courts to dabble in at this time.

I intend to spell out that theory distinguishing the Klor case and the Rogers case and all the cases cited before me and before Judge Sullivan in the briefs.

Now I will go back to the question before this jury. On what Judge Thompson said I was inclined to disagree with him. I still would like, would much prefer to send the jury out on that one question and let them decide it.

I have a great principle here. One of our tremendous problems in Washington and throughout the country is the anti-trust cases that take five, six, seven, eight months or a year to try whether or not we can separate issues to cut down the overhead of the courts and to have the time, but expedition is not the only issue in the separation of issues.

It is also a great service, in my judgment, for the administration of justice, and while it may meet with dis-

approval of one side or another, that isn't what concerns me.

1239 Am I on the right track in the separating of the issues? I would like to have this jury go out and say there is or there isn't a public injury in this case, and I am of the opinion, I was of the opinion that there was just a smattering of evidence, slight as it may be, and I would like to consider it and reserve my judgment, that there is enough to go to the jury on, but if you admit that there is nothing in the record to justify any increase in rates or any inferior service, I would have to sustain that judgment, because I am not trying this lawsuit. I am following counsel's arguments and reasoning.

You have your choice on just what I have said, and I will abide by your decision.

By Mr. McConnell: My position is and I have tried to make it clear that the issue is irrelevant.

By the Court: I want to be very honest and not mince any words, and I don't want the appellate court to say to me there was something in the record, because there is something in the record. The fact they were cross examined by the defendants on the better service indicates there is some controversy in the record, but if you say there is none—

By Mr. McConnell: I have never stated or ad-
1240 mitted evidence in a case since the time I was admitted to practice where I offered it in bad faith.

By the Court: I never said that. Did I intimate that?

By Mr. McConnell: No; you are not intimating it, but the effect of it would be that I have offered evidence here where I say it doesn't prove anything.

1241 By the Court: No. As a matter of fact, I wanted you to make your record complete over constant objections and arguments from the defense, and I stood solid on my ground that I did not want to short-change the

plaintiff in its right to offer proof to make its record, so that if I am wrong I shall be smashed down by the Court of Appeals in no uncertain terms.

I didn't want to go on any shaky, doubtful or weak proposition. I wanted to go up on the question of fact and on the question of law.

What I said with all due regard to the plaintiff, nothing was done in this case, maybe the stretching a little bit of what the witness may not have said, but I cannot speculate nor can I charge plaintiff's lawyer with wilful and deliberate disregard of the truth. I am not going to do that, and I don't believe in it.

It is maybe a question of interpretation, maybe a question of knowledge that he has something that I don't have. Maybe it is his conclusion, some of the testimony or the depositions.

I have never charged and do not charge now and never will charge any bad faith in this case on the part of plaintiff's lawyers nor on defendants'.

1242 Whatever was injected in this case was injected by me on my rule. I am taking that responsibility solely, exclusively and completely.

The attitude of counsel towards me was something different, but on the trial of the case I have no objection at all. The only question is this, between you and me now. It is not a question; it is just a matter of our respective opinions on this thing.

Do you stand solely on your right to have offered the conspiracy to prove public injury, and without it you do not contend you have enough in the record?

By Mr. McConnell: Well, I am not going to make that concession. I will make this concession, and I think my client agrees with me on it. It is what a lawyer can do with his client's rights. Maybe I had better consult with him. He is here.

By the Court: Yes. I want to say this also, that you and I differ so clashingly on what is the law of anti-trusts. You say that all you have to do is come into a court and show some little meeting of some people behind the scenes and the giving of a contract, and that is anti-trust.

1243 I disagree with it, and I will so state in my opinion. There has to be more than that. There has to be within the interpretation of Congress, and this is not it. We have an honest disagreement.

1244 By Mr. McConnell: We disagree more fundamentally than that. My disagreement is that we have a right to prove conspiracy, not by some little meeting, but over a whole course of dealing, and all the evidence that we wanted to offer.

By the Court: The extent of conspiracy, the seriousness and gravity of it, and, as I said before, and I will say it now, I will never condone it. It does not change the law on anti-trust if it is not originally within that purview, and that is where you and I differ. I am not ruling out anything.

I am merely saying, from what I have heard, and there is more in the record than sufficient to sway me the other way if I were to be swayed legally and not factually. It doesn't bring it within the purview and within the sphere of the anti-trust law.

By Mr. McConnell: On the other question you are asking me to concede something on the record.

By the Court: I didn't mean concede.

By Mr. McConnell: I can't do it without my client's consent.

By the Court: I will submit it to the jury. I will reserve my ruling. As long as I am going to dismiss the jury anyway, I am—

1245 By Mr. McConnell: It doesn't make any difference what the jury does as long as you dismiss them.

By the Court: I will do it on the basis of law on my theory that this does not belong after they bring in a verdict one way or the other, and I will make a finding of fact and conclusions of law that this is not within the family of anti-trust cases.

By Mr. McConnell: Could we have a recess so I can talk to my client?

By the Court: Yes; I will give you twenty-five minutes.

By Mr. McConnell: I don't need that. Give me ten minutes.

By Mr. Thompson: I don't know what the point is that your Honor is making now. I don't quite understand it, but we certainly don't want any moot question submitted to the jury that is not going to be deciding anything.

By the Court: Let me make it clear again. The jury will be limited to the isolated question of public injury, nothing else. I will make a finding of law and fact independent of it of what transpired in my court room in the last seven or eight days.

By Mr. Thompson: All right; we don't need any jury verdict.

1246 By the Court: Not for that.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

1247 By Mr. McConnell: If the Court please, we have offered evidence in this case to show, or which tends to show, purports to show, and it was offered in a good faith effort to show that we did have good service and that we had—

By the Clerk: Just a moment. There is a juror coming out.

By Mr. McConnell: (Continuing)—and that we had in the last two years of the contract, at least, a lower rate because there was a ceiling on our proposal as opposed to no ceiling.

There is evidence here to show that in the last year, which they are paying now, they are paying $1.27 per coupon as against our top limit—

By the Court: The Marshal says the jurors are smothering in there. The air conditioning is out of order. This won't take too long. Go ahead.

By Mr. McConnell: (Continuing)—our top limit of $1.25.

Now, that evidence, if we ever get to an anti-trust case, and we have got a trip upstairs and back again to do that, overruling your Honor's rulings, and we have to do that, that evidence is relevant on various issues in an anti-trust case.

1248 To concede that it isn't the fact, that it doesn't prove that our service is better than theirs, we just can't do. I have talked it over with my client, and while we want to cooperate in any way we can, we just can't do it in view of the over-all situation.

We do believe that it proves that we have better service than Keeshin. We do, however, take the position, as I have said many, many times, that we don't think it makes the slightest bit of difference on the public injury whether we did or we didn't.

Now it seems to me, and I want to suggest this to the Court, one of the reasons for this division of issues, I assume, is to shorten the issues and save expense and time. This is a very expensive proceeding for everybody.

While I as a lawyer shouldn't object probably because I am getting paid, nevertheless it is costing the client money to sit here. If your Honor tells us in advance you are going to direct a verdict anyway, well, it seems to me to the interest of everybody to have the verdict directed at the earliest possible time so that we can have a record made and get on.

1249 By the Court: I didn't say that.

By Mr. McConnell: Well, I misunderstood you

then. I thought you said no matter what the verdict of the jury was—

By the Court: I said regardless of what the jury's verdict will be on the question of public injury, that I will hold independent of that verdict that this case does not belong in the family of anti-trust cases. Therefore, from the evidence offered and put on, it does not belong in the anti-trust case family and should not be prosecuted.

By Mr. McConnell: Well, if you make that ruling, your Honor, with all due deference, I don't see why you can't make it just as well now as later, and the parties are saved the expense of further hearing.

By the Court: No. I want to do it, as I see it, as is proper under the law.

By Mr. McConnell: We cannot, for the reasons stated to your Honor, we cannot make the concession.

By the Court: All right.

The motion will be overruled. The motion of the defendants is overruled.

I am taking it under advisement, as I said before, but I am overruling it at this time.

By Mr. Meserow: Could we have a five minute 1250 recess, please?

By Mr. Freeman: How about until 2:00 o'clock, your Honor?

By Mr. Meserow: All we need is about five minutes.

By the Court: I will give you fifteen minutes, until 11:30.

By Mr. Thompson: Let's adjourn and get the jury out of that suffocating room, if we are going to recess at all.

By the Court: I will give you my private office. Let the jury in the witness room, and open the window. Take them in the witness room.

By Mr. Thompson: We could just as well adjourn until 1:30 or 2:00 o'clock if we are going to adjourn at all.

By Mr. Freeman: Would it be convenient for your Honor to resume at 1:30?

By the Court: Yes, sure. You want to adjourn until 1:30?

By Mr. Thompson: We won't lose any time by doing it that way.

By the Court: All right; 1:30.

(Thereupon a recess was taken in the hearing of the above-entitled case to 1:30 o'clock p.m. of the same day, Tuesday, May 3, 1960.)

1251 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, May 3, 1960
1:30 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. John Borst, Jr.,
Mr. Lee Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1252 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1253 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(And thereupon the following further proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: We are ready to proceed.

By the Court: Are you ready?

By Mr. Freeman: Mr. McConnell was here. He should be right back.

By the Court: I will wait.

All right, Judge Thompson, Mr. McConnell is here.

By Mr. Thompson: We are ready.

By the Court: Proceed. Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By the Court: Good afternoon, everybody. All right, gentlemen.

By Mr. Thompson: Good afternoon. Mr. Padrick, please.

And Thereupon The Defendants, In Order To Maintain The Issues On Their Behalf, Introduced The Following Evidence:

1254 EARL B. PADRICK, called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please.

A. Earl B. Padrick.

Q. What is your business address, Mr. Padrick?

A. Room 436 Union Station, Chicago.

Q. What is your present position or employment?

A. Chairman of the Transcontinental and Western Passenger Associations and also Chairman of several allied bureaus or agencies.

Q. You know which of the railroads of Chicago are parties defendant to this suit, do you not?

A. I do.

Q. Which of them are members of the Western Passenger Association?

A. The Illinois Central, the Santa Fe and the North Western.

1255 Q. Is there another comparable or similar passenger association that represents the eastern lines?

A. Yes.

Q. What is that?

A. Trunk Line Central Passenger Committee.

Q. Who, in 1954 and 1955, was chairman of that railroad organization?

A. I don't know the exact dates, but Mr. Tony Winkler is now the chairman and was chairman in 1955.

I believe, however, in 1954 that his predecessor was chairman, a Mr. Vanderbilt Arnold.

Q. Which of the defendant railroads belong to that association?

A. The Pennsylvania, the New York Central and the Baltimore and Ohio.

Q. There has been mentioned in the case a group or organization called the Chicago Terminal Lines. What is that, Mr. Padrick?

A. Well, it is a group of Chicago terminal railroads, in this instance being the Chicago terminal passenger carrying railroads.

Q. What composes the Chicago Terminal Lines in the sense that we are using the term here?

A. All of the railroads that terminate in Chicago,
1256 passenger carrying railroads that terminate in the City of Chicago.

Q. Is that a formally organized corporation or association?

A. No, sir; it is not.

Q. Are you an officer or an employee of what is called the Chicago Terminal Lines?

A. I am not.

Q. You have been indicated as chairman or, in some instances, acting chairman of the Chicago Terminal Lines. Will you explain that to us, please.

A. Yes. As a matter of convenience, I act as chairman when they call a meeting. It is usually, I might say several years ago, when there were two passenger associations, one Central and one Western, the two chairmen sat in unison at a Chicago Terminal Lines meeting. Sometimes the chairman of the Central Committee would act. Sometimes the chairman of the Western Lines would act. But the Central Association was combined with the trunk line and moved to New York, and because of that situation it seemed as though it just happened that I would receive the requests from the railroads for calls for such meetings, and having received the requests I would act as chairman of the meeting.

Q. In sending out these calls and in reporting
1257 the proceedings, was it often done in the joint names of you and Mr. Winkler, Mr. Winkler being

the officer of the Eastern group?

A. It was always done that day, unless there was a typographical mistake in the office.

Q. Mr. Winkler, why didn't he preside?

A. His officers are in New York City, and it wasn't convenient for him to be here.

Q. Did you receive any pay as the chairman or acting chairman of the so-called Chicago Terminal Lines?

A. I did not.

Q. Do these lines meet at any regular time, this group?

A. No, sir.

Q. When do they meet?

A. On call.

Q. How do these calls originate?

A. Because of some circumstances that requires attention, something that has to do with the Chicago situation.

Q. What are the subjects considered by this group of representatives of lines?

A. Well, during this period that we are talking
1258 about it was primarily the subject of the transfer between stations in Chicago. But there were also, on the same, at certain intervals, there were other subjects on the docket.

Q. Subjects of common interest to the local lines?

A. Yes.

Q. How long have you been engaged in railroad service in one fashion or another in Chicago?

A. In Chicago since 1937.

Q. Has your connection been with these associations of railroads during all that period?

A. Yes.

Q. How long have you been chairman of the Western Passenger Association?

A. Since 1948.

Q. How long have you been as a matter of accommodation acting as chairman of this Chicago Terminal Lines group?

A. Since that time. I may have acted as chairman of some of the meetings prior to that time, if any predecessor happened to be out of town or was ill.

Q. Who was your predecessor?

A. H. W. Siddall.

Q. In what capacity were you serving when Mr.
1259 Siddall was chairman?

A. Vice chairman.

Q. Now during this period of time that you served in Chicago, have we had this transfer service of passengers and checked baggage between stations in Chicago?

A. Yes.

Q. Tell us the need for that service. What was it for?

A. Well, it was established—do you want me to go into the historical?

1260 Q. No, from your own experience.

A. My experience of it? My experience with it is that it was established because of competitive situation in the City of Chicago as between railroads. I don't know that that was the reason it was established, but certainly that is the reason it was continued, and all during my time, it has been continued for that reason.

There are six main stations and two smaller stations, eight stations in all, in the City of Chicago. Some stations serve only one railroad; others serve several railroads.

Where several railroads are served that could be, or it is a fact that one railroad would come in to a station and another railroad leave from that same station, causing a competitive situation with another railroad that has their facilities cross town or depot facilities cross town. In

order to bring them on a parity, they provided for the transfer.

Q. The Union Station, that is located where

A. Well, it is located between the River and Clinton, and between Jackson and Adams, the Chicago River.

Q. What railroads use that station as a terminal?

1261 A. The Milwaukee, the Pennsylvania, the Burlington, and the GM&O or Alton Route.

Q. Of those railroads that you have mentioned, which is an eastern line?

A. The Pennsylvania.

Q. Serving what principal areas of the country?

A. Oh, Indiana, Ohio, Pennsylvania, I believe Maryland and Delaware, and New Jersey, and a part of New York, New York City.

Q. And the Burlington that you mentioned is a western line, isn't it?

A. It is.

Q. Speaking of the Burlington, that includes passenger trains that operate over what related companies?

A. Well, the Great Northern operate their through trains over the Burlington from St. Paul to Chicago, and the Northern Pacific operate their through trains from the north coast to Chicago over the Burlington from St. Paul to Chicago. They come into the Union Station.

Q. And the Burlington itself operates to Denver and west?

A. It operates to Denver.

Q. And Kansas City, and other stations?

1262 A. And Kansas City.

Q. All right.

What about the GM&O or the old Alton road?

A. Well, they are today primarily a Chicago-St. Louis line.

Q. Anyway, southbound?

A. That is right. At this particular time they also have through train service to Mobile.

Q. Alabama?

A. That is right.

Q. And the Milwaukee is a north and western railroad, is that right?

A. That is correct. The Milwaukee operates through trains over their own line to Seattle, Tacoma, St. Paul, and originally the Union Pacific through trains came in over the North Western at the North Western Station, but later they are now operated over the Milwaukee from Omaha to Chicago and come into the Union Station.

1263 Q. What roads, without our going into detail, are served by the Grand Central Station?

A. The Pere Marquette, C&O, the Soo Line, and the B&O.

Q. And the Soo Line is part of the Canadian Pacific System, isn't it?

A. I believe that it is, yes.

Q. Now then, of those roads, the B&O is an eastern road competitive with the Pennsylvania?

A. That is correct.

Q. The C&O is eastern, southeastern and northeastern?

A. Well, this particular section runs into Michigan.

Q. And the Soo Line goes up through Wisconsin and connects up in Canada?

A. Also competitive, somewhat competitive in connection with St. Paul traffic.

Q. Then the Twelfth Street Station, or the Illinois Central Station generally called, serves what roads?

A. Well, originally it served, of course, the Illinois Central, the Big Four, which is part of the New York Central, and the Michigan Central, which is part of the New York Central, but later the trains that operate over

the Michigan Central were moved over to the La-
1264 Salle Street Station, but the trains operating, the Big Four trains, on that section over to Indianapolis, Cincinnati, still go out of the Illinois Central Station.

Q. The LaSalle Street Station you mentioned, to shorten this up, serves the New York Central System and the Rock Island Railroad?

A. Yes, and the Nickel Plate.

Q. The North Western serves only the North Western?

A. Correct.

Q. And then we have the Dearborn or Polk Street Station which serves what railroads?

A. The Santa Fe, Wabash, Erie, and I may have forgotten one. I think it is the Western Indiana or some suburban service.

Q. The Santa Fe is a western road and the Wabash is a mid-continent road and the Erie is an eastern road, is that correct?

A. That is correct.

Q. From the standpoint of the handling of passengers, is this transfer service regarded as essential or not by the railroads?

A. We think it is essential in that we feel that there
is a requirement upon us to provide through service
1265 for through passengers.

Q. Is the situation in Chicago rather unique as compared with other large cities in the country?

A. Yes, in that they have as many stations as they have, and that all trains terminate in Chicago.

Q. That is, there is no railroad running from coast to coast through Chicago or from the Gulf to the Lakes through Chicago?

A. No through train service.

Q. Is it regarded that taxicab service could be a substitute for this unified service provided by the railroads?

A. Well, it was considered a couple of times, but the carriers have always felt that it is not a substitute for the type of service that we would like to perform or have performed for us, and I speak of us in the general term as railroads, all the railroads.

1266 The transfer service is such that we cannot depend upon taxi cabs. We have found that on days of congestion, that those are on days, particularly rainy days where it is very difficult sometimes to get immediate service of a taxi cab, so there must be a type of service that can, within a very short period of time, transfer passengers from one station to another in order to make train connections.

Q. Who provides this transfer service?

A. Today it is provided by Railroad Transfer Service, Inc.

Q. Well, I mean who pays for it, who provides for it?

A. Well, 99 per cent of the transfer or through service, transfer coupons are furnished by the railroads and paid for by the so-called outgoing terminal line.

Q. Have the railroads over a period of years provided for this unified transfer service by one contractor or another?

A. Yes.

Q. Ever since you have had any connection with the service in Chicago has this been provided by the railroads?

A. Yes.

1267 Q. And the coupon that is used to get this transfer service is included in through tickets, is that it?

A. It is included in through tickets.

Q. So that if one buys a through ticket from a point at a distance outside Chicago to a point at a distance on the other side of Chicago, that coupon is included, is that right?

A. That is correct. It is included free of charge to the passenger if it is within—if it is outside of a radius of 82 miles.

Q. You mean 82 miles from—

A. From Chicago.

Q. From the Chicago center?

A. From a Chicago station. Well, the first highly competitive point is Milwaukee, and the transfer service is given free of charge to Milwaukee, and that sets the charge at which there is from distances less than Milwaukee a graduating amount down to where the passenger, for example, going from Chicago to Evanston would pay the full transfer rate.

Q. And if he is going from Chicago to Racine or Kenosha he would pay some graduated rate between the full and the nothing?

A. That is right. It is based upon the full amount
1268 of the Milwaukee fare.

Q. Was that the situation prior to 1955 as well as subsequent?

A. To my knowledge it has always been the case.

Q. So there is no difference in that aspect of the situation between the service the plaintiff was rendering prior to October 1, 1955 and that now being rendered by defendant Railroad Transfer Service since 1955?

1269 A. As far as the arrangement is concerned, it has always been based upon this Milwaukee situation.

Q. Does that apply where the originating point and the terminating point are east eighty-two miles or less from Chicago?

A. No; it is the destination from Chicago to destination.

Q. So if one were going from Kankakee, Illinois, to San Francisco, California, and he bought his ticket at

Kankakee, would there be included in the through ticket a transfer coupon in Chicago?

A. Yes.

Q. Without charge?

A. Yes.

Q. To the customer, I mean.

A. Yes.

Q. So it is only when they are going from some point lesser than eighty-two miles on each side of Chicago that it is included, that a charge is included?

A. Yes.

Q. In the matter of this transfer contract, arrangements for it, did you have anything to do with that service of the railroads from day to day or week to

1270 week in your capacity as acting chairman?

A. Well, in one of the meetings that was held to appoint a committee to determine whether or not there were others that would offer to provide the service, I was directed to be on the committee. Of course, I never have the right to vote on the committee.

Q. In other words, you are not the representative of any particular railroad?

A. That is right. Regardless of what committee I am on, I never have a right to vote.

1271 Q. And these passenger associations, either the Western or the Eastern you mentioned, have no contractual relation with the Transfer Service Company? The associations as such?

A. I am afraid that I am a little confused by your question.

Q. Well, let's split it up.

Does the Western Passenger Association of which you are chairman, is it a participant in the contract with the transfer company, whatever it is?

A. No, it is not.

Q. Nor is the eastern one you mentioned a moment ago?

A. It is not.

Q. It is a matter of--well, who are the contracting parties?

A. The railroads, terminal railroads of Chicago, the passenger carrying railroads.

Q. Has that been so since you have had any contact with the situation?

A. It has.

Q. Do you know whether there was a written contract covering this transfer service prior to 1955 with the different railroads?

A. There was no joint contract. There was no 1272 individual contract except, I believe, that there may have been two, and I think those were with the Grand Trunk or the Nickel Plate, I can't remember which, and the Erie. Now there may have been contracts with them, and I am not sure of that.

Q. Well, how were these arrangements made then from year to year with the contractor?

A. Oh, negotiations were provided for through meetings either with the Chicago Terminal Lines or by appointed committees, the committees having been appointed by the Chicago Terminal Lines.

Q. How frequently were these contracts or arrangements made? That is, did they terminate annually or did they go from year to year, or what was the arrangement, if you know?

A. Well, generally, whenever there were any difficulties arising in connection with transfer as far as negotiations were concerned, either I would receive a request from the operator, or from some of the carriers to arrange for a meeting.

In many instances the operator's representatives were requested to be present, and in any case where the operator requested that the meeting be called, they were present.

1273 Q. Now prior to October 1, 1955, who was the operator?

A. Parmelee company.

Q. Do you recall who were the spokesmen of the Parmelee Transportation Company, let us say, in 1955?

A. In 1955, Mr. Markin.

Q. Who is Mr. Markin?

A. He is chairman of the board of Parmelee company. I believe that is his title.

Q. That is Mr. Morris Markin?

A. Correct.

Q. Do you know where he lives?

A. Kalamazoo.

Q. Michigan?

A. Yes, sir.

1274 Q. And with whom did Mr. Morris Markin, during 1955, let us say, have conferences?

A. I want to correct my statement to this extent. In some instances there was a Mr. Rhetigen in 1955 that I had some negotiations with.

Q. That is R-h-e-t-i-g-e-n, isn't it?

A. I believe that is the way you spell it, but I am not sure. I would have to see it in writing. I don't remember how it is spelled.

Q. Well, Mr. Rhetigen, as you understood it, at least, was connected with or was an officer of Parmelee Transportation Company?

A. Yes, sir.

Q. And when did he come into the picture, if you recall, approximately?

A. Well, it was shortly after a Mr. Passolt passed away. I believe that was in 1953, the latter part of 1953.

Q. Do you know what capacity Mr. Passolt served in while he was here?

A. Yes, he had the title of President.

Q. Who prior to Mr. Passolt was president of the transportation company that had to do with this local problem?

1275 A. A Mr. Landman.

Q. Where was he located, at least in the most part?

A. In New York City.

Q. Now in your contact with the Parmelee Transportation people, whoever were their spokesmen at the different periods, did they confer with you sometimes privately, that is, as the acting chairman without a meeting of some kind?

A. They could, yes, on certain occasions they could have called on me and talked about certain things.

Q. And if they made a proposition for some adjustment of some kind, either in the service or the cost of the service, how did they communicate that to you?

A. Well, sometimes the first meeting could be of a personal nature, just call and talk about it, but in each instance when it was a request for increased rates, it was always, and I always required that this be placed in writing by the operator and that proposition, whatever it was, was submitted to the Chicago Terminal Lines or to the committee that had been appointed for the handling of such matters.

1276 Q. If there was a committee, it was communicated to the committee?

A. That is correct.

Q. And if there wasn't, what did you do then?

A. It went to all of the Chicago Terminal Lines.

Q. What did you do, call a meeting?

A. Generally a meeting was called based upon whatever the request happened to be, or there may have been some instances that I delayed calling a meeting until a carrier, one of the carriers asked for it.

By the Court: May I interrupt one second?

I would like to tell the jury, the plaintiff has rested. The defense is now putting in its side.

I should have told you that at the outset, so you will know the proceeding. Is that clear?

I didn't mean to interrupt, Judge, but I thought they ought to know.

By Mr. Thompson: I assumed they knew who was doing the examining. At least, they knew they had a change
1277 of pace anyway.

By Mr. Thompson:

Q. Mr. Padrick, what about when there were problems of labor negotiations between Parmelee and its employees? Was that communicated to you?

A. Yes, sir.

1278 Q. Going back only to 1947, do you recall a communication from the Parmelee company with respect to their labor situation in 1947?

A. Yes. We had been advised by the Parmelee people that there was a possibility of a work interruption, and that there was a meeting called of the Chicago Terminal Lines in which the representatives of Parmelee participated.

Q. Do you recall who were the spokesmen of the Parmelee Transportation Company in the 1947 meeting?

A. Well, I do remember that at that time a Mr. Landman was in charge, and I am quite sure that he attended the meeting that I have reference to.

Q. What is your recollection as to when this was? Do you have any idea of the date in 1947, the time?

A. I couldn't be positive as to the date, but it seems to me that it was in July.

Q. Was there a period each year when these negotiations occurred according to the information you have?

A. Yes.

Q. When did the arrangements that Parmelee company had with its employees terminate, according to your experience?

A. July 1st.

1279 Q. Do you know whether or not they had any contract between the employees and the employer that extended over a period longer than a year?

A. I have never been advised of such a contract.

Q. Now, this July meeting that you speak about, what occasioned that meeting in July?

A. Well, we were informed prior to the call of the meeting that there might be some difficulties and there might be some work interruptions, and it was necessary for us to find out definitely what was going to be done about it so that we could prepare—I say "we,"—the railroads could prepare themselves for the eventuality of a work interruption. The discussion at the meeting—as I recall, there were two meetings that were held, either one in the morning or one in the afternoon or one, one day and one the next day. I can't tell you exactly whether that is what the date was, but it was in July, and I believe it was the latter part of July.

We were advised that the negotiations had come to a standstill, and there would probably be some kind of work interruption.

Q. Do you recall who advised you? Do you remember who the spokesmen were?

1280 A. Yes, it was the Parmelee representatives.

Q. Yes, I know, but do you remember the individual who advised you?

A. I am sure it was Mr. Landman.

Q. Was the first meeting that you had a meeting with the representatives of the Parmelee people?

A. Yes, they were there.

Q. Was it also a Terminal Lines' meeting, one of these large ones with representatives from all twenty-one of the railroads, or was it a sub-committee meeting, or do you recall?

A. Well, I don't recall whether it was a sub-committee meeting or a general meeting. I would say it was a general meeting.

Q. Was there a resolution made of the problems so far as the lines and Parmelee were concerned at this first meeting?

A. Yes, there was. That was the first time that I know of that the carriers had arranged for the handling of passengers by the payment of 60 cents to each passenger presenting a through coupon, the 60 cents to represent at least an average of the taxi cab fare between stations.

1281 Q. Was that action that was arrived at or that solution recorded in some sort of proceedings or report of proceedings?

A. Yes, sir, it was.

Q. How did you usually do that sort of thing at your meetings, this matter of keeping a record of what happened?

A. Well, in some instances it depended upon how many subjects were on the docket, how broad the issues might be.

In the early days it so happened that my chief clerk had been a court reporter and could take shorthand, and he would take the action that was taken, and he would write it up in a draft form, and from that draft I prepared the proceedings.

Q. Did he undertake to report verbatim what was said back and forth?

A. No, he couldn't do that.

Q. Well, these notes or minutes, or whatever you call them, were they preserved?

A. No, at none of my meetings. The fact of the matter is, part of the record was that there would be no verbatim kept of any of the meetings that I presided over. That is true generally in connection with
1282 these railroad meetings for the purpose of trying to get a broader discussion of subjects, and if every word that everybody said in some of those meetings were kept, I think that perhaps on some of the subjects there would be a lot of silence.

Q. What about the reporting of these proceedings, how are they reported?

A. The action that was taken was always reported as a proceedings of the meeting.

Q. What you mean is about not taking the verbatim report is that the debates were not recorded?

A. That is right. The final action was taken down, and that was made into a proceedings, copies of which are all over the place.

Q. And after the minutes or proceedings, as you call them, were written up, what was done with them?

A. They were promulgated to the interested lines.

Q. That is, mimeographed copies were made and sent out to all of the lines?

A. That is right.

Q. By the way, who did this manual work of preparing these proceedings, mimeographing them, furnishing the paper and the postage and what have you?

A. That was done in my office.

1283 Q. And then if there was any accumulated expense, what was done with respect to taking care of that?

A. Well, we have an arrangement between these various associations where joint work is done one for the other, that we bill the cost of that particular work pro rata between associations, and that is the way it was handled.

Q. In addition to sending copies of these minutes, that have to do with the local station-to-station transfer business, to the interested railroads, did anyone else get copies?

A. Yes. Usually whoever sat in the meetings got copies of the proceedings.

Q. As to this matter of these applications of Parmelee Transportation Company for increased pay or reporting their labor difficulties or anything like that, your proceedings recording that, were they sent to Parmelee also?

A. If they sat in the meeting, they got copies.

1284 By Mr. Thompson: Mark this document as Defendants' Exhibit No. 7, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 7 for identification.)

By Mr. McConnell: Can we see that before you start with the witness so we can get our document on it?

By Mr. Thompson: Certainly.

We also ask to have this one marked as Defendants' Exhibit No. 8, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 8 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit No. 7, for identification, and ask you whether or not that is a report of proceedings of your discussion with the Parmelee Transportation group on or about July 29, 1947.

A. This so happens to be a report of my predecessor. However, I was in the meeting.

Q. Does that memorandum contain the tentative
1285 arrangements that were made in the event of this interruption of service?

A. It contains part of it, not all of it. It pertains to the part of the handling of the passengers, but it does not pertain to the part other than to suggest a further meeting with others concerning the handling of the checked baggage.

Q. Were Parmelee representatives present at that meeting that is reported in these proceedings?

A. Yes, sir.

Q. Who was present, if you recollect, or if this refreshes your recollection?

A. Mr. Landman, Mr. Scheeder and Mr. Passolt.

Q. You have mentioned Mr. Landman as a former president. Who was Mr. Scheeder?

A. Vice-president.

Q. And also Mr. Passolt, I think you said, was a vice-president?

A. I believe he was vice-president at that time. I am not sure of his exact title at that time.

Q. Were all there of them present at this conference with the lines?

A. I would say they were.

Q. Does that appear to be a report of proceedings
1286 of the discussion between the Terminal Lines' representives and the Parmelee representatives?

A. Yes.

Q. It is not some sub-committee action?

A. No, sir; it is the Terminal Lines.

Q. Was there some part of the solution of the problem postponed at that meeting?

A. Yes, that part that pertains to the handling of checked baggage.

Q. I note on this document an admonition to not broadcast these proceedings. What was the purpose of that, if you recall?

A. Well, the only reason that I can recall is that of the possible labor difficulties, and it was not desired at that particular time to broadcast this while the negotiations with labor were still going on.

Q. Do you recall what Mr. Landman or Mr. Passolt, or whoever the spokesman was for Parmelee, told you about their labor situation at that stage on July 29?

A. My recollection of it is as written here in this document. It says here:

"And in connection with that a brief outline was given by Mr. Landman concerning the conditions
1287 that might possibly bring about an interruption of service."

Q. How long had this negotiation of the settling of the labor problem been continuing when this meeting was held?

A. I am not positive. I am not sure how long.

Q. Was it represented to you when the contract with their labor folks had terminated, the previous contract?

A. July 1.

Q. And this was July 29, was it?

A. The 30th.

Q. July 30th?

A. Yes.

1288 Q. What about the labor, I mean the baggage problem; when was that discussed or taken up?

A. It was taken up the following day.

Q. On July 30th, and the following day would be the 31st. I show you Defendants' Exhibit No. 8, for identification, and ask you if that refreshes your recollection as to the day on which it was considered?

A. Well, this is the proceedings of the meeting of August 1st, so it would have to be August 1.

Q. Who was present at that meeting, without naming the individuals?

A. Several representatives of all of the Chicago Terminal Lines, including their baggage handling representatives. I can see from the names here that also all of the stations were represented. Parmelee representatives were not in attendance at this meeting.

Q. Had there been some action taken—

A. By the way, I notice here that I presided at that meeting.

Q. On July 30th when you had this meeting with the Parmelee people, was there action taken with respect to calling this meeting of August 1 and inviting the 1289 station people and the baggage people who could give specific information on this baggage problem?

A. Yes. That is the reason that only the passenger end of it was handled with the passenger people. They wanted to have their baggage and operating representatives in attendance, which I thought was the following day, which now appears to be August 1, and I say operating representatives, and I mean the superintendents of transportation and their baggage representatives because of the method that was thought would be necessary in connection with handling the checked baggage.

Q. Had Parmelee stated whether or not it could make arrangements to take care of handling the baggage in the event of a strike?

A. They indicated that they could not handle the checked baggage or the passengers.

Q. And are the minutes that you have in front of you, the proceedings, Defendants' Exhibit 8 for identification, a true report of the events that took place on that day of August 1, 1947, and also the action taken?

A. Yes, sir.

Q. Was that made in the regular course of busi-
1290 ness of the terminal lines?

A. Yes, sir.

Q. And was it the regular course of the business of the terminal lines to keep a record of the proceedings of these meetings?

A. Of the terminal lines to keep them?

Q. To keep a record of the proceedings of its meetings where actions were taken?

A. It was usually up to the presiding officer to make a record and promulgate the record. Whether they kept them or not, I wouldn't know.

Q. You don't get my point. I don't mean did they physically carry them around with them. Was it their business to keep a record of the proceedings that they had at the meeting?

A. Yes; I was directed to so do.

Q. And these two documents, Exhibits 7 and 8, both of them are of that character, are they?

A. They are.

Q. Well, was the labor difficulty finally resolved in 1947 so there was not a strike?

A. There was no work interruption that year.

Q. What about 1948?

A. Well, in 1948 we had advice of a similar
1291 situation, and the terminal lines were alerted to be prepared to put this arrangement into effect in the event of a work interruption.

1292 Q. Well, was it resolved that year without interruption?

A. Yes, sir.

Q. What about 1949?

A. In 1949 generally we had a situation that had developed to a point where there might be some work interruption, and we were informed of that.

Q. By whom?

A. As I recall, we were informed verbally that that might take place, and, as I recall, that was by Mr. Passolt.

Q. And then what did you do?

A. I advised the carriers to be prepared to place this arrangement in effect in the event of a work interruption.

Q. By "this arrangement," you mean the arrangement that had been agreed upon in 1947?

A. That is right.

Q. What about 1950?

A. In 1950 the arrangement came to a standstill, and there was a strike, and these arrangements were placed into effect.

Q. How long did that strike last in 1950, approximately?

1293 A. Approximately six months. I might say that during the period of the strike there was a slight change that had to be made in the program as adopted. It called for the transfer of railroad cars between stations, six stations, an embargo on the handling of checked animals through Chicago, and a two-a-day car switch between stations because of the congestion on the switch trackage where it had to be changed to one switch a day.

Q. And that was in carrying out the matter of the transfer of baggage? That was to be done by baggage cars and a switching operation?

A. That is right. They call them trap cars. I don't know why. That is what the operating people call them.

Q. There is nothing unusual about railroads having terms that nobody knows what they are except railroads, is there?

A. I guess that is right.

Q. What about the passengers?

A. The passengers, arrangements were made for the railroad passenger representatives to meet the oncoming trains and to have cash on hand to give each passenger presenting a transfer coupon 60 cents.

1294 Q. Was that done?

A. It was done.

Q. And these folks then were to go out and find their own taxi cab and make their own trip across town, is that correct?

A. That is correct.

Q. Do you know whether the plaintiff here, the Parmelee Transportation Company, owned the Yellow Cab service here in Chicago?

By Mr. McConnell: I object to that. The best evidence of that would be something else besides hearsay.

By the Court: A little louder, please, Mr. McConnell.

By Mr. Thompson: I only asked him if he knew.

By Mr. McConnell: I objected on the ground that the evidence of that would be something other than hearsay.

By the Court: I think so; that is correct.

By Mr. Thompson: If he knows it might not be hearsay.

By the Court: If he will say he knows, then ask him what is the source and then we can pass upon it.

1295 By Mr. Thompson:

Q. All right. Did you talk to the Parmelee Transportation people about who owned the Yellow taxi cabs in Chicago?

A. Yes, I had.

Q. Who told you, if anybody?

A. Mr. Markin.

Q. What did he tell you?

A. He has informed me that they were part owners of

the Yellow Cab Company.

1296 Q. What about the Checker cab?

A. Checker Cab Company, I can't recall that he told me that.

Q. Getting to another subject, do you know what the transfer charge was prior to 1942, the coupon charge?

A. Seventy-five cents.

Q. Then what happened in 1942?

A. Eighty-five cents.

Q. Then how long did it remain eighty-five cents?

A. I don't know the exact date, but it went to a dollar.

Q. From eighty-five cents to a dollar?

A. Yes.

By Mr. Thompson: I will ask that these documents be marked, respectively, Defendants' Exhibits 9, 10, 11, 12, and 13, for identification.

(Thereupon the said documents were marked Defendants' Exhibit 9 through 13, inclusive, for identification.)

By Mr. Thompson:

Q. Directing your attention to Defendants' Exhibit 9 for identification, I ask you to look at that and

1297 see if it refreshes your recollection as to the time and amount of the demand and the increase requested?

A. It is a letter from Mr. Landman, president of the Parmelee Transportation Company, dated July 29.

Q. What year?

A. 1947, and states that it is imperative that the rate be adjusted to one dollar effective July 1.

Q. 1947?

A. 1947.

Q. Was this call of the meeting promulgated to the representatives of the passenger terminal lines in Chicago?

A. It was, yes.

Q. Was this a call that was issued in the regular course of business by you and—

A. By my predecessor.

Q. Mr. Siddall and by Mr. Chown, the predecessor of—

A. Mr. Armold; he is the predecessor of Mr. Armold. Yes, it is.

Q. In other words, jointly by the two associations we mentioned a while ago, representing the western and eastern railroad lines?

A. That is right.

1298 Q. I call your attention to Defendants' Exhibit 10 for identification, and ask you if that is a report of the proceedings of the Chicago Terminal Lines of August 7, 1947, respecting this request for increase and also respecting threat of cessation of service?

A. Yes, sir, it is.

By Mr. McConnell: I object to the characterization. I think the document speaks for itself.

By the Court: I will sustain the objection.

By Mr. Thompson: What part of the characterization, the report?

By Mr. McConnell: Your characterization of the document as a threat. I object to that. The document speaks for itself.

By Mr. Thompson:

Q. All right. Is this a report of the proceedings of that meeting of August 7, 1947?

A. It is.

Q. Did the meeting deal with the two subjects of the request for an increase of the coupon and also with the subject of possibility of interruption of the service?

1299 A. It did.

Q. Does that recite this understanding of making the tentative arrangements to handle the passengers if interruption did occur?

A. It does.

Q. These two documents are documents prepared in the regular course of business for the terminal lines?

A. They were.

1300 Q. Was this matter of the increase from 85 cents to a dollar for the coupon that was requested in the letter of July 29, 1947 resolved during 1947?

A. I know it was resolved, but I can't tell you the exact date. I believe it was later in that same year.

Q. Well, I will bring to your attention a couple of documents.

Defendants' Exhibit 12 for identification purports to be proceedings of the Chicago Terminal Lines of January 16, 1948. Will you take a look at that and see if that refreshes your recollection as to whether it was resolved in 1947?

A. It was January 1, 1948 that the $1.00 went into effect.

Q. It went into effect then.

Directing also your attention to Defendants' Exhibit 13 for identification, does it indicate when the meeting was held which made a resolution of this problem?

A. January 16, 1948.

Q. Were the Parmelee representatives in attendance at that meeting of the representatives of the Terminal Lines?

A. They were.

1301 Q. Do you recall who represented the Parmelee people at that meeting in January, 1948?

A. Mr. Markin, Mr. Scheeder and Mr. Passolt.

Q. Were copies of those proceedings sent to the Parmelee people?

A. They were.

Q. Now were there any other written confirmation of the arrangements or agreements you would make with

the Parmelee people other than these minutes that were promulgated between the Lines and Parmelee?

A. None as far as I know.

Q. If it was anything, it was an exchange of letters or something like that?

A. That is correct.

Q. For instance, this Defendants' Exhibit 13 for identification, that appears to be what?

A. It is a letter from my predecessor to Parmelee Transportation Company, dated January 24, 1948, with copies to Mr. Landman of Parmelee and to Mr. Chown, who at that time was chairman of the Trunk Line Central Committee, passenger committee, with copies also to the Chicago Terminal Lines.

Q. And that confirms the increase from 85 cents to a dollar?

1302 By Mr. McConnell: I object to that. I have been quite patient about this, I think, down to date, and I don't want to be captious about this, but if he is going to put these documents in, they ought to go in through evidence, and not have the witness characterize them.

By the Court: I will let the witness answer but I will sustain—

By Mr. Thompson:

Q. It is the letter on the subject, isn't it, rather than just minutes?

A. It is a letter on the subject announcing the increase.

By the Court: We will take a ten minute recess.

(Thereupon a short recess was taken.)

1303 By the Court: All right; bring out the jury.

(Whereupon the following proceedings were continued in the presence and hearing the jury:)

By Mr. Thompson: Mark this as Defendants' Exhibit No. 14, for identification.

(Thereupon said document was marked Defendants' Exhibit 14 for identification.)

By Mr. Thompson:

Q. I direct your attention to the document I have marked as Defendants' Exhibit No. 14, for identification, which bears date of January 8, 1948.

Do you have any recollection of the discussions you had with Mr. Markin of the Parmelee Transportation Company during these negotiations for the 1948 increase with respect to his attitude toward continuing the service?

A. At the time that these negotiations were going on, it had been indicated by Mr. Markin of the possibility of discontinuing the service.

Q. Does that indication have any connection with the request of the increase from eighty-five cents
1304 to one dollar for a coupon?

By Mr. McConnell: I object to him testifying

By the Court: Yes; it is leading.

By Mr. McConnell: I object to his being led and having a document before him. If he wants to identify these documents and put them in evidence, I have no objection.

By the Court: He may inquire, but not lead.

By Mr. Thompson: I was only directing his attention to a subject, your Honor, if you please.

By the Court: Not the amounts. To discuss the price, that is something else.

By Mr. Thompson:

Q. Well, did this conversation, or I mean this indication of discontinuing the service have anything to do with the pending negotiations respecting the coupon rate?

A. Twice to my knowledge in negotiations, the exact dates of which I cannot recall at this time, but there
1305 were twice to my knowledge that Mr. Markin indicated that unless from the price of the coupon he

could obtain at least a ten percent return, that he would not be interested in the performance of the service, continued performance of the service.

1306 Q. Do you recall whether or not one of these instances was during the 1948, the 1947-1948 negotiations?

A. Not positively.

Q. Does the document which I have marked refresh your recollection as to the time of one of such representations?

A. It does.

Q. What is that date?

A. January 8, 1948.

Q. All right.

Now, then, with your recollection refreshed, can you say whether or not he made, whether or not Mr. Markin made such a suggestion or statement during the 1947-1948 negotiations?

A. I believe he did.

Q. Was there a time following the 1947-1948 negotiations when there was a further request for increase in the coupon rate by Parmelee Transportation Company?

A. Yes.

Q. Do you recall when that was?

A. Not the exact date. I know how it was settled, but I don't know the exact date the request was made.

Q. Sir?

1307 A. I don't know the exact date that the request was made, but I know what the final settlement was.

Q. Well, do you remember what year the second or the next settlement, rather, came into effect, approximately what year?

A. I believe it was in 1949.

Q. What was the amount of the increase, if you remember?

A. Well, it went to $1.05.

Q. The one you are thinking of is the time when the rate was increased from $1.00 to $1.05, is that correct?

A. That is correct.

Q. When was the next problem with respect to the increase of the transfer charge?

A. The question came up again during the time of the strike in 1950.

1308 Q. Well, do you recall whether there was any adjustment of the ticket at that time or was there just some adjustment in gross or something of the sort, or do you know?

A. No, there was no adjustment made in the coupon charge at that time. As I recall in the negotiations there was the basis for payment providing the coupon, number of coupon level did not increase beyond a prescribed level. The papers for that, however, are all in my files, and I believe that for the first two months of that arrangement — that arrangement, however, brought about the settlement through that arrangement and through the negotiations of Parmelee Company with their employees. The strike was settled and, as I recall, there was a couple of payments made in connection with a flat amount that represented less coupons that was agreed upon being on it.

Q. All right. When did the next matter of an increase charge come about, if you recall?

A. It was either 1951 or 1952. I don't recall the exact date.

Q. Isn't that when the $1.00 to $1.05 went into effect, now refreshing your recollection?

1309 A. It could have been. These changes, the specific dates on which the changes were made and the negotiations become a little confused after these many years.

By Mr. McConnell: Why don't you give him the documents? Let him look at them. We have no quarrel with those dates.

By Mr. Thompson: I appreciate you don't. That is the reason I led the witness. There is no document on the $1.00 to $1.05 that we have.

By Mr. Freeman: There is a document.

By Mr. Thompson: There may be. I don't have it.

By Mr. Freeman: Do you want it?

By Mr. Thompson:

Q. Anyway, it was increased from $1.00 to $1.05 in 1952, apparently by agreement.

By Mr. McConnell: No question about it.

By Mr. Thompson:

Q. Now when did the next matter of coupon charge come on for consideration?

A. It was in early 1954.

Q. Do you remember what the request was at that 1310 time of the Parmelee people?

A. I believe there were some overtures made that would indicate that it was necessary to have $1.32.

By Mr. Thompson: I ask that this be marked Defendants' Exhibit 15 for identification.

(Thereupon the said document was marked Defendants' Exhibit 15 for identification.)

By Mr. Thompson:

Q. I call your attention to what purport to be proceedings of the meeting of the lines on January 29, 1954, which has been marked Defendants' Exhibit 15 for identification, and ask if reference to the first part of the proceedings on the third page there indicate the request that was made, the formal request for coupon rate?

A. From $1.05 to $1.25 was the settlement.

Q. That was the request.

A. Pardon me. The request was from $1.05 to $1.25, retroactive to January 1, 1954.

Q. Yes. Now had the matter been orally discussed in the fall of 1953 with Parmelee representatives of a desire for increase prior to the formal application
1311 in 1954?

A. It had.

Q. Do you remember who was present at the oral discussion representing Parmelee?

A. Mr. Markin.

1312 Q. Who representing the Lines?

A. Well, I was representing the Lines.

Q. Were there just the two of you or were there several in this conference in December, 1953, if it was December?

A. Well, there were others present.

Q. You don't recall who?

A. No, not at this time.

Q. Now was there a formal application, a written application for this request of increase from $1.05 to $1.25 retroactive to January 1, 1954?

A. There was.

Q. What was the date of that formal request?

A. I don't know the exact date of the request. It was—it had to be immediately prior to January 29.

By Mr. McConnell: January 29, what year?

By the Witness: 1954.

By Mr. Freeman: Mr. Thompson, could you let me see that document so we can try to find it among our papers, or identify it for me so that I can find it.

By Mr. Thompson:

Q. I call your attention to a document which has already been marked Defendants' Exhibit 5 for
1313 identification, and which purports to be a call of a meeting of the Lines for April 15, 1954, and ask you whether that meeting was held April 15, 1954.

A. There was a meeting called for April 15 for the Chicago Terminal Lines and April 16 for a meeting of the Chicago Terminal Lines with representatives of Parmelee Transportation Company.

Q. Were those two meetings held?

A. They were.

Q. Now do you have in those proceedings what purports to be a communication from Mr. Markin to you respecting this request for an increase?

A. We do.

Q. What date does that document that is before you bear, which is a part of this Defendants' Exhibit 5?

A. April 5, 1954.

Q. Do you recall that there was an earlier communication which this supplements?

A. There is reference made in this document to a communication of January 20, 1954, addressed to me, requesting the increase from $1.05 to $1.25 retroactive to January 1, 1954.

1314 Q. Is that the communication to which you earlier reported of a communication some time prior to January 29?

A. Yes, sir.

Q. From whom did you receive this communication?

A. From Mr. Markin.

Q. How did he sign himself to that communication?

A. Chairman of the board, Parmelee Transportation Company.

Q. Does that communication of January 20, 1954, make reference to the time when you had your oral meeting, I mean your discussion in person or orally?

A. December 10, 1953.

Q. And Mr. Markin so indicates in his own letter, is that it?

A. Yes.

Q. Is there anything in there to indicate who was present at the December 10, 1953, discussion that you noticed?

By Mr. McConnell: If the Court please, I have no objection to this if he is going to put these documents in evidence, but I do object if he is letting the wit-
1315 ness tell us the contents of documents which have not been offered in evidence.

By the Court: Is that the same document you said was in evidence, Judge?

By Mr. Thompson: No; I said it had been marked.

By the Court: Objection sustained.

By Mr. Thompson: The question I asked was if there was anything in this document which would refresh his recollection of who was present at the December 10 meeting.

By the Court: If that was the question, it was all right.

By Mr. Thompson: That is my question.

By the Court: He must exhaust his recollection, and then he tells the jury he doesn't remember any more, and then he can refresh it.

By Mr. Thompson: I appreciate that, your Honor, and he did so say three or four minutes ago he didn't remember who was at the meeting.

By the Court: He didn't remember the substance of the meeting.

1316 By Mr. McConnell: As I understand the question—

By Mr. Thompson: I won't spend any more time on it. It is unimportant as the document speaks for itself, as has been indicated.

By Mr. McConnell: That is what I said, and that is the basis of my objection.

By Mr. Freeman: Will you tell me what the number is of that exhibit?

By the Court: Judge Thompson, did you hear his question?

By Mr. Thompson: Yes. I am trying to think of three things at once.

By the Court: I didn't know whether you heard it or not.

By Mr. Thompson: The document is Defendants' Exhibit No. 5, for identification, and is purports to be a record of the meeting that was held on April 15, 1954, of the Chicago Terminal Lines and on April 16, 1954, of the lines with Mr. Markin and his other representatives, and it consists of a lot of pages.

1317 By Mr. Thompson:

Q. Was there submitted to the lines at that time tabulations which were furnished by the Parmelee people in support of their request for this increase from $1.05 to $1.25?

A. There were.

Q. Was there a subcommittee appointed to negotiate with the Parmelee people with respect to this request?

A. I believe there was.

Q. Was that a different subcommittee than the one that was appointed to survey the whole situation?

A. I believe it was the same committee of railroads. As far as the individuals were concerned, there may have been a difference.

1318 Q. Did you sit with this sub-committee that was considering the Parmelee request?

A. I did.

Q. During the course of your discussions with the representatives of the Parmelee company with respect to this request for increase, was there any request made of them to support their request?

A. There was.

Q. What was that request?

A. The first request was for a so-called profit and loss statement.

Q. Was this the first time you had ever requested such a thing from Parmelee?

A. No, sir.

Q. When prior thereto did you make such requests?

A. A similar request was made back in 1947.

Q. Was a profit and loss statement ever furnished by the Parmelee Transportation Company?

A. Not a profit and loss statement, no.

Q. Were there some sorts of tabulations furnished by Parmelee in 1954?

A. There were.

Q. During the course of the discussion was there a representation made by Mr. Markin as to how much
1319 of a coupon charge he needed, really needed to meet the cost, the increase in cost and the decrease in volume of the transfer of passengers?

A. Yes; there was presented at that particular time a memorandum indicating that because of the loss of —

By Mr. McConnell: Object to that. If it is in the memorandum, I think the memorandum would be the best evidence.

By the Court: Are you referring to a conversation?

By the Witness: I am referring to what was presented to us by Mr. Markin.

By Mr. Thompson:

Q. All right.

Now, about the conversation that occurred. During the course of the discussion did Mr. Markin make any representations as to amounts that were needed?

A. Yes; it went to as high as $1.50.

Q. You mentioned a while ago something about $1.32 or $1.35. Was that something that occurred in these discussions?

A. It did. It finally got down to that.

Q. You carried on these negotiations for how long before you reached the settlement of them? These
1320 papers I just handed to you, as you may recall, were dated April 15 and April 16, and they refer to meetings at that time.

Do you recall whether you came to a resolution of the problem at these April 15 or April 16 meetings, or was it beyond that?

A. It was beyond that, but how long I can't recall at the moment.

By Mr. Thompson: Mark this as Defendants' Exhibit No. 16 for identification, and mark this as Defendants' Exhibit No. 17, for identification.

(Thereupon said documents were marked, respectively, as Defendants' Exhibits Nos. 16 and 17 for identification.)

By Mr. Freeman: Mr. Thompson, would you let me see them so I can find them, please?

By Mr. Thompson: Yes.

By Mr. Thompson:

Q. Getting back to Defendants' Exhibit No. 16, for identification, is that a report of the proceedings of one of the meetings of the Lines?

A. It is the proceedings of April 16, the April
1321 16, 1954 meeting.

Q. Who was present representing the Markin, I mean the Parmelee Transportation Company?

A. Mr. Markin, Mr. Scheeder, Mr. Rankin and Mr. Krock.

Q. Is that K-r-o-c-k? I think that is the first time he has been mentioned.

A. That is right.

1322 Q. Also on the other side of the table were the representatives of the terminal lines, is that correct?

A. They were in the meeting, yes, sir. There were also present at the meeting some station representatives.

Q. I direct your attention to a document marked as Defendants' Exhibit No. 17 for identification, which purports to be the proceedings of the meeting of April 26.

Does that refresh your recollection as to the time of the postponing meeting for resolution of this problem?

A. The April 26th meeting?

Q. Yes.

A. It was called for the purpose of trying to meet final conclusions with respect to the matter.

Q. Do you recall whether you did reach them or not?

By Mr. McConnell: I object to his reading from the document. If he recalls, he recalls, but he is looking at the document now.

By Mr. Thompson:

1323 Q. Do you recall without looking at the document?

A. Yes; the situation was resolved.

Q. Do you remember what agreement was finally reached?

A. As I recall it, it was on a basis of $1.12—$1.12½ retroactive to January 1, and it was $1.20 retroactive to April 1, 1954.

Q. Running through until when?

A. Well, I presume it was to run until we got another request for an increase.

Q. Well, do you recall whether there was a--

By Mr. McConnell: I object and move to strike that out as an assumption.

By the Court: The objection is sustained to the last part.

By Mr. Thompson:

Q. Do you recall, Mr. Padrick, whether there was a formula or an escalator clause provided for taking care of the situation after July 1, 1954?

A. There was.

Q. What was that, if you remember?

A. It was on the basis of one cent for every three-cent increase.

Q. Do you recall whether, by July 1, 1954, when
1324 the escalator clause was to have application, whether the Parmelee Transportation Company had reached an agreement with its employees so that you knew what the increase was at that time, or was it later?

A. I didn't get the date that you gave.

Q. The escalator clause was to apply, so you said, beginning July 1, 1954, a one-cent increase for each three-cent increase in the wage scale?

A. That is correct.

Q. Do you remember whether, by the time July 1, 1954 arrived, Parmelee Transportation Company had reached an agreement with its employees so you knew whether the formula applied or not?

A. It did apply.

Q. Do you remember when, or do you know when it was put into effect?

A. Well, it went to $1.22.

Q. I wish to call to your attention Defendants' Exhibit No. 18, which I will have marked for identification.

(Thereupon the said document was marked Defendants' Exhibit 18 for identification.)

That purports to be a letter from the Parmelee
1325 Transportation Company by Markin, the president, to Mr. E. B. Padrick under date of September 23, 1954. Do you remember receiving that letter?

A. I do.

1326 Q. You have no recollection, as I understand it, when the matter of the solution of the railroad problem, I mean the labor negotiations, concluded in 1954. Does that refresh your recollection?

A. It refreshes my recollection to the fact that it went to $1.22.

Q. When?

A. July 1, 1954.

Q. Do you mean retroactive to July 1, 1954, or when did the labor negotiations result in an agreement? Does that letter say?

By Mr. McConnell: Well, I think the letter speaks for itself, your Honor, and I object to his telling what the letter says. If he wants to offer it in evidence, I have no objection to it.

By the Court: He may refresh his recollection.

By Mr. Thompson:

Q. Does it refresh your recollection, or do you know when they finally got an agreement with their employees that year?

A. I don't recall the exact date.

Q. All right. Do you recall to what time Mr. 1327 Markin's agreement extended with his employees?

A. No, I do not.

Q. I call your attention to the letter to which I just made reference and ask you to look at it and see whether that refreshes your recollection as to the time Mr. Markin represented that his labor agreement extended.

A. July 1, 1954.

Q. That is when it became effective.

By Mr. McConnell: I don't care for your testimony. I object to it.

By the Court: Yes, sustained.

By Mr. Thompson: All right; the document will tell.

By Mr. McConnell: Certainly it will.

By Mr. Thompson: Since the witness can't read it.

By Mr. Thompson:

Q. When this request for $1.00 or an increase for $1.25 was presented to the Terminal Lines, did they take any

action with respect to this matter of requesting, of requested increases?

A. Yes, they did.

Q. What did they do? What is your recollection
1328 as to what the Lines did in addition to settling the current controversy?

A. Well, we went over point by point the representations made by the Parmelee company.

Q. I direct your attention again to Defendants' Exhibit No. 15, for identification, particularly page, that which is marked as page 2 thereof, and I ask you if that refreshes your recollection as to a resolution that was adopted at that meeting of January 29, 1954 with respect to this transfer service.

A. It does.

Q. Does that resolution that is recorded in the minutes there—was that resolution recorded in the minutes adopted as the minutes show?

A. It was.

Q. Was there more than one committee appointed at that meeting?

A. There were two committees appointed at that meeting.

Q. All right.

These minutes show what the two committees' duties were, is that correct?

A. They do specifically.

Q. Were these minutes prepared in the usual and regular course of business of the Terminal Lines' group?

A. They were.

1329 Q. Were these minutes promulgated to the members of the terminal lines?

A. They were.

Q. Was there a committee appointed pursuant to the resolution?

A. Yes.

Q. Well, it has been stated here a good many times, Mr. Padrick, what railroads are on that committee.

Did you meet with that subcommittee of six railroads that were appointed to look into this matter of transfer service?

A. I did.

Q. Do you remember who the regular persons were that met as the representatives of these six railroads, as spokesmen for them?

By Mr. McConnell: May we have the time, please, when we are talking about?

By Mr. Thompson: Well, this is the spring of nineteen—

By Mr. McConnell: The committee members change, as you know.

By Mr. Thompson:

Q. All right. The regular committee members at 1330 the outset.

A. Well, to start out with, the committee was appointed as railroads and those that usually represented this committee in these matters I can testify to, yes.

Q. All right. Who were they? What was the regular personnel of this committee so far as persons appearing was concerned?

A. They were augmented from time to time, and there were substitutions made from time to time, but generally this committee consisted of at that time Mr. Kimbel of the Illinois Central, Mr. Quackenbush of the North Western, Mr. Nelson of the B&O, Mr. Holt of the Pennsylvania, Mr. Sloan of the Santa Fe—have I named six?

Q. The New York Central.

A. And Mr. Bone of the New York Central.

Q. Was there a chairman of this committee of railroads?

A. Yes.

Q. Who was that?

A. Mr. Bone of the New York Central.

Q. Now what, if you recall, was the first action taken by this subcommittee of six railroads?

1331 A. Well, the first action that I can recall having been taken by this committee was to formulate a list of those that might be interested or might be induced to be interested in giving consideration to handling the transfer service.

Q. Do you recall after they formulated the list—did they formulate a list?

A. They did.

Q. What was done after that, then?

A. Well, they divided the list between several on the committee, and asked that those to whom they had been appointed, the several organizations, that they contact those organizations to determine whether they would be interested in performing the service.

Q. Were you requested to take part of that chore of contacting prospective bidders?

A. I was.

Q. Do you recall who was assigned to you?

A. Yes. As I recall it now, I was given the assignment of the Chicago Gray Line, the Hertz Driv-Ur-Self—

Q. Hertz Driv-Ur-Self?

A. Hertz Driv-Ur-Self, and Parmelee Transportation Company, and later the New York Gray Line.

1332 Q. I don't suppose you recall who was assigned to the other members of the committee, or do you?

A. No, I don't.

Q. Now, after these initial contacts were made, was there a meeting between the committee as a whole and the persons who had indicated some interest?

A. Yes.

Q. Do you recall when and where this first meeting was held, the first two days of meeting?

A. I don't recall the exact dates. I do recall this, that I wasn't present the first day. I was there the second day.

Q. I think it is September 15 and 16 of 1955. Does that refresh your recollection?

A. I believe those were the dates.

By Mr. Freeman: 1954.

By Mr. Thompson: All right. There is no dispute about it.

By Mr. Freeman: There is a dispute. I mean, I think it was an inadvertence. You said 1955, and you meant 1954.

By Mr. Thompson: All right. Thank you for the correction.

1333 By Mr. Thompson:

Q. September 15 and 16, 1954?

A. I believe those were the dates.

Q. And meetings were held where, if you recall?

A. I think that the meetings were held at the Union League Club.

Q. Now you say you were not there the first day, the 15th?

A. No, I was out of the city.

Q. Do you recall who appeared before the committee on September 16 to discuss this matter?

A. Well, I remember Landman appearing before the committee. I remember an Ayers appearing before the committee. And I believe that Mr. Keeshin appeared before the meeting.

Q. How long were these interviews with each of the companies that appeared?

A. Primarily the meeting was for acquainting those that indicated the desire in the business to make some

further presentations, to acquaint them with what would be expected of them with respect to the transfer.

Q. Had there been a memorandum or outline of the service in general prepared for distribution prior to this September meeting?

1334 A. Yes, there had.

Q. And had that been distributed?

A. It had.

Q. These were just oral discussions at this September meeting?

A. To answer any questions that might arise in the minds of those that had indicated that they wanted to submit something further.

Q. Now, do you remember what request was made with respect to the time when the committee would like to have submissions from those who were interested in making a final bid?

A. Yes, there was some indications to the effect that they would like to have the bids in by the first of the year.

Q. When November came around, were there any bids in that you have any recollection of?

A. No.

Q. Did the committee take any action to stimulate some bids in November, 1954?

A. Yes, the committee was directed to take further action in connection with the matter and endeavor to determine whether or not any of the principals were interested to the extent that they would submit in

1335 writing their proposal.

Q. Did any of these invitees ask the committee for further interview before preparing their formal bid?

A. I believe that Mr. Markin indicated that he would like to have an interview with the committee.

Q. Do you recall whether Mr. Keeshin did or not?

A. Yes, I think he did.

Q. Do you recall whether there was a further interview between the committee and Mr. Keeshin first?

A. Yes, there was.

Q. Do you recall whether there was a further interview between the committee and Mr. Markin?

A. I dn't believe that he had submitted anything in writing up to that time.

Q. Now when did Mr. Keeshin submit his first proposal in writing, if you recollect?

A. I don't recall the exact date, but I believe it was in December.

By Mr. Meserow: What year?

By the Witness: Well, it was prior to January, the final date we had requested. That must have been 1954.

By Mr. Thompson: I will ask that this document 1336 be marked Defendants' Exhibit 19 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 19 for identification.)

By Mr. Thompson:

Q. I call your attention to what has been marked Defendants' Exhibit 19 for identification. That appears to be what, Mr. Padrick?

A. This is a letter from Mr. Keeshin to Mr. Sidney Bone, who was acting as chairman of the sub-committee, and is dated December 15, 1954.

Q. Is there attached to that what appears to be, at least, the formal proposal of Mr. Keeshin for doing this transfer service?

A. Yes, there is.

Q. To your recollection was that the first written proposal that the committee had received?

A. It was.

Q. At this interview between Mr. Keeshin and the committee prior to his submitting this written proposal, what did Mr. Keeshin say to the committee as to the survey he had made, if any?

A. Well, he indicated that he had had a group of his men, as he put it, survey the several stations
1337 to determine the type of service that would be involved.

Q. Now do you recall that later in December, 1954, whether there was an oral interview between Mr. Markin and perhaps other Parmelee representatives and members of the committee?

A. The following December?

Q. Yes, around Christmas, 1954.

A. Yes, there were some conversations back and forth.

Q. Do you remember what was said to Mr. Markin about getting a bid in, if he was interested?

A. Well, I personally urged him to get his bid in.

By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 20 for identification.

(Thereupon said document was marked Defendants' Exhibit No. 20 for identification.)

By Mr. Thompson:

Q. I direct your attention to a document which has been marked Defendants' Exhibit 20 for identification, which together purports to be a letter from Mr. Bone to Mr. Keeshin of January 11, 1955, and a reply by Mr. Keeshin on January 15, and Mr. Bone's transmittal of the
1338 correspondence to you under date of January 19.

Now, did you receive that communication from Mr. Bone?

A. I did.

1339 Q. And up to this time, January 19, 1955, had there been any written proposal made by any of these invitees to do this interstation transfer service?

A. I don't think so. There is one that I am in doubt about. There was a very short letter written to Mr. Bone, a copy of which was forwarded to me, by Willett Transportation Company, and I don't recall the exact date of that letter, but I don't think—I am sure that it wasn't before this.

By Mr. Freeman: Could you give me the code reference of those documents, Mr. Thompson?

By Mr. Thompson:

Q. Did you have any knowledge of any change in the labor situation in Chicago with respect to whether or not there was some period agreement with the Teamsters, so-called, and the employing transportation and trucking services at about this time?

A. The knowledge that I have with respect to that is what was transmitted to me at that particular time, and I understood that there was a three-year agreement that had been accomplished.

Q. Did Mr. Keeshin make any change in his bid 1340 by virtue of these other changes?

A. He made a positive three-year coupon rate.

Q. As of January 15, 1955?

A. Yes, that is right.

Q. Now had the Parmelee Transportation Company up to that time filed any proposal, written proposal, as to what it would do after June 30, 1955?

A. We had not received anything in writing from the Parmelee Transportation Company at that time.

Q. Do you remember when you did finally get something from them?

A. I believe it was in March.

By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 21 for identification.

(Thereupon the said document was marked Defendants' Exhibit 21 for identification.)

By Mr. Thompson:

Q. I hand you a document marked Defendants' Exhibit 21 for identification, consisting of four pages.

A. It is a letter from Morris Markin to me dated March 15, 1955.

Q. And is that the first proposal you had received
1341 in writing from the Parmelee Transportation Company with respect to an agreement under which it would render the service after June 30, 1955?

A. It is.

By Mr. McConnell: I object to the characterization of this. It speaks for itself, whatever it is.

By the Court: Overruled.

By Mr. Thompson:

Q. Now what happened next, after March 15 when you got this document?

A. Well, there was some indication that Mr. Markin desired to have a meeting with the committee. First representations were made to me, and then I referred them to Mr. Bone, who was chairman of the committee. It was decided that there would be a meeting, at which each of the representatives that had established a written bid would be called and be questioned concerning their bid.

1342 Q. And was there a personal meeting with the Parmelee representatives and the committee of six railroads?

A. I do not recall of one separately from the meeting that was called at which others were also invited at a period of the day.

Q. I am talking about following this March 15 meeting. Was there a meeting with Markin to discuss his bid on the 17th, say, within the next couple of days?

A. I believe there was.

Q. Do you recall that discussion that took place between the sub-committee of the Lines and the committee of the Markin people, I mean the Parmelee people?

A. Well, I can't recall too much of it now.

Q. Do you recall any discussion of a provision of the Parmelee proposal that had to do with volume of passenger traffic?

A. I most certainly do. In connection with that a discussion took place with respect to the so-called second escalator clause. That was the term that was used by the sub-committee, and that was the clause that indicated that there would be a one per cent—

Q. A one cent, you mean?

A. A one-cent increase for every one per cent decrease in the volume of travel, and Mr. Markin was
1343 told that the railroads were never consent to any such escalator clause.

Q. Was there any such clause in the Keeshin bid?

A. No, sir.

Q. Do you recall anything else that was discussed at this March 17 meeting with Markin and his representatives or his associates, I mean?

A. A question of equipment was discussed, and there was an indication on the part of Mr. Markin that he expected over a period of time to spend $500,000 in equipment replacement.

Q. Was there anything said about the period of agreement he wanted in the event he was to supply some new equipment?

A. Yes. As I recall it at that time it was six and a half years.

Q. Was there anything said by Markin as to what he wanted this period of time for?

A. Yes, to amortize the cost of his equipment.

Q. Prior to 1955, which is the period we are now talk-

ing about, was there more than one contractor at a time which the railroads contracted with to do this transfer service?

A. No, sir.

1344 Q. During the period that you were here in Chicago what company was the sole contractor for this local transfer service?

A. The Parmelee company.

Q. Is the Parmelee Transportation Company the plaintiff in this case?

A. They are.

Q. Was there anyone else performing this transfer service in Chicago during all this period that you were familiar with it, other than the Parmelee Transportation Company?

A. They were the only operators performing that service.

Q. What was the period of time, if you remember, that Mr. Keeshin proposed was desirable for a contract to equip for and render this service?

A. Five years.

Q. And the Parmelee was even for a longer period?

A. Yes, sir.

Q. I direct your attention to a document which I am having marked as Defendants' Exhibit No. 22, for identification.

(Thereupon said document was marked Defendants' Exhibit No. 22 for identification.)

1345 By Mr. Thompson:

Q. (Continuing) I call your attention to a letter which purports to be a letter, rather, dated April 6, 1955 from Mr. Keeshin to Mr. Bone, and I inquire whether or not that was brought to your attention at or about the time of its date.

A. It was.

1346 Q. Was that a supplement to the original proposals of Mr. Keeshin?

A. I would consider it as such.

Q. At this March 17 meeting between Mr. Markin and his associates on the one hand the railroad committee on the other, was anything said by Mr. Markin as to the price to which the coupon charge might go if this volume of passenger traffic continued to decline?

A. Yes, there was.

Q. Was that said in connection with the discussion of this so-called second escalator clause?

A. It was.

Q. What did he say?

A. Well, it might reach $1.50.

Q. What about the present volume of passenger traffic that transfers between stations in Chicago at this time? At the present time is what I am talking about.

A. At the present time?

Q. Yes.

A. We indicated in a letter that went out to those we thought might submit bids that there would probably be on the basis of a million and a half a year. It

1347 is running now less than a million a year.

By the Court: One million two?

By the Witness: Less than a million a year, closer to nine hundred thousand.

By the Court: Thank you. I didn't hear it.

By Mr. Thompson:

Q. In other words, there has been a decline year after year in the volume of passenger traffic, is that it?

A. Generally, yes. With respect to passenger traffic, that is so, that is right, and in connection with the transfer of passengers between stations in Chicago, that follows.

Q. After this March 17 meeting with Mr. Markin and his associates where this bid of March 15 was discussed, and after the April 6th letter from Mr. Keeshin respecting his proposal, what next occurred in which these two bidders were involved?

A. There were a meeting in May, and I believe it was May 19.

Q. Where was that meeting or those meetings held?

A. At the Union League Club.

1348 Q. Tell us about the May 19 events.

A. Well, the May 19 event or meetings we anticipated that there might be three representatives showing up and time was prepared for the three in the morning, and I believe it was ten o'clock in the morning. It could have been 10:30, but anyhow in the morning I mean Mr. Keeshin was to appear, and in the afternoon Mr. Markin was to appear, and then later in the afternoon time had seen set aside for Mr. Willett if he intended to appear.

Q. Was this May 19 meeting one arranged by agreement among the railroad representatives and also among the representatives of the bidding contractors?

A. Mr. Bone arranged for the meeting. He was the chairman of the committee.

Q. All right. At the May 19 meeting in the morning at the Union League Club, you say that is when the Keeshin group appeared before the committee?

A. Yes.

1349 Q. Do you recall who was there as the spokesman for the Keeshin interests?

A. Well, I remember that Mr. Keeshin was there, and Mr. Baxter was there.

Q. Who was Mr. Baxter, if you know?

A. Mr. Baxter is Mr. Keeshin's assistant or representative of the Railroad Transfer Company.

Q. Did you know Mr. Baxter prior to the time that he became associated with the Keeshin interests?

A. I did not.

Q. All right.

Who was at the meeting, if you recall, in the morning, representing the Chicago Terminal Lines? Indicate who was there for the New York Central, if you recall.

A. Mr. Bone.

Q. And who for the Baltimore and Ohio?

A. Mr. Whittington, and there may have been others. I don't recall, but Mr. Whittington was the top man.

Q. Do you recall whether Mr. Nelson was there, who had been working on the committee?

A. I believe he was. I know the top spokesman was Mr. Whittington at that meeting.

Q. Who was there for the Pennsylvania?

1350 A. Mr. Comer and Mr. Holt.

Q. Mr. Holt was the regular man on the committee. Who was Mr. Comer, if you know?

A. Mr. Comer is the general passenger traffic manager of the Pennsylvania from Philadelphia.

Q. Who was there on behalf of the Santa Fe, if you recall?

A. I know that Mr. Sloan was there. I can't recall whether there were others there besides Mr. Sloan or not. There may have been.

Q. What about the North Western?

A. Mr. Brennan was there.

Q. Did he also bring along with him Mr. Quackenbush who had been the regular representative?

A. I don't recall that Mr. Quackenbush was there.

Q. Or Mr. Stewart?

A. I don't recall that he was there either.

Q. I think I covered the field except the Illinois Central, I guess. Who was there from the Illinois Central?

A. I am not sure who was there for the Illinois Central at that meeting.

Q. Was Mr. Hearne there? Does that refresh your recollection?

1351 A. I believe he was. I believe Mr. Hearne was at that meeting.

Q. And Mr. Smart?

A. I don't recall whether Mr. Smart was at that meeting or not.

Q. This is May 19, 1955?

A. That is correct.

Q. Now, tell us what occurred in the forenoon of May 19, 1955 when you were having the Keeshin hearing.

A. Well, we belabored Mr. Keeshin with a lot of questions about the application of his proposal.

Q. Did Mr. Keeshin first present his case?

A. That is correct.

Q. And then you questioned him?

A. Yes. He indicated what he proposed to do in the way of handling the service, the type of vehicles that he intended to use.

Q. Tell us what he said.

A. Well, he said he was going to obtain a sufficient number of station wagons, and if necessary, other types of equipment to perform the service between the stations.

Q. For passenger service?

1352 A. Passenger service between the stations. He indicated also that he intended to handle the transferred baggage by trailers, parked trailers, to the extent that the trailers could be parked at the various stations, and that also he indicated that he intended to establish a separate center at the LaSalle Street Station, and that he would keep the tractors moving between the stations during the period of time, the eight-hour period of the transfer service or longer if necessary, to take care of the transfer of checked baggage between trains, with the tractor service to pick up the trailers.

Q. Did he indicate how frequently he contemplated moving the baggage from one station to another?

A. The checked baggage, a minimum of four trips a day.

Q. What else did he say about his equipment?

A. Well, he indicated that he would replace that equipment, the passenger carrying equipment within a maximum period of thirty months, and that his equipment for the handling of the checked baggage would be replaced as necessary.

He also indicated that the equipment would be air conditioned equipment for the handling of the pas-
1353 sengers and would be radio-dispatched equipment and that likewise his tractors for the transfer of checked baggage between stations would be radio-dispatched.

1354 Q. Was anything said to him about furnishing profit and loss statements?

A. That came in the questioning period later on, and he was questioned as to whether he would be agreeable to furnishing a profit and loss statement, and he did agree to furnishing a profit and loss statement and indicated that it would be prepared by an outside auditing firm.

Q. Can you think of anything else that was brought out in the inquiry?

A. Oh, yes. There was one other thing that was questioned in connection with it, and this was most particular, the question of whether he anticipated any interruption of service because of labor disputes, and he indicated that he anticipated none. In fact he endeavored to show some papers that he had there that dealt with the fact that he had assurances of a three-month—three years stabilized service.

Q. Did he say what assurances he had with respect to

the fourth and fifth years of his proposed contract with labor officers?

A. Well, he provided for an escalator clause for his fifth and sixth years on the basis of one cent for every five cents' increase in salary for the fifth and sixth
1355 years.

Q. Did he say anything about conversations he had with Mr. Fenner about negotiations he had for a longer period?

A. Yes, he indicated that he was in negotiations with Mr. Fenner at that particular time for a longer period of time, and that he hoped to be able to come up with as long as a six years' contract.

By the Court: Shall we quit now? We have some jurors who live out in the suburbs and I want them to beat the traffic. That was a message I got through channels. Is that right?

All right, so come back tomorrow morning at 10:00 o'clock. Again I ask you to please not discuss this case with anyone, and have a nice evening.

1356 (Whereupon out of the presence and hearing of the jury the following proceedings were had:)

By the Court: I have very little tomorrow morning. Suppose the lawyers come in tomorrow morning at 10:15.

By Mr. Thompson: Do you want to stay a few minutes to offer these documents?

By the Court: You mean in the absence of the jury? I will discuss it with you.

By Mr. McConnell: I don't care. Put them in evidence as far as I am concerned. You have them marked.

By the Court: Let's wait until the jurors leave. I have lots of time.

By Mr. Thompson: I don't know, I was just trying to save time.

By Mr. McConnell: Well, I said in the course of the proceedings that if he wanted to offer the documents, I have no objection to them, so he can just mark them admitted if he wants to.

By Mr. Thompson: Tomorrow morning will take care of it.

1357 By the Court: Judge, I want to say one thing, I see no objection to their being offered in the presence of the jury, if there is no objection.

By Mr. Thompson: If there is not going to be any objection, we will do it in the morning, and there can't be any argument.

By Mr. McConnell: All you have to do is strike out the identification, and it is in.

By the Court: You will offer it in the morning. I thought there would be objections, and then I would hear you.

Very well; 10:15 tomorrow.

(Whereupon an adjournment was taken to 10:15 o'clock, a.m., of the following day, Wednesday, May 4, 1960).

1358 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Wednesday, May 4, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman
Mr. John Borst, Jr.
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Andrew J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

1359 Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1360 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(And thereupon the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

By Mr. McConnell: Mark these as Plaintiff's Exhibits 103, 104, 105 and 106, for identification.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 103, 104, 105 and 106 for identification.)

By Mr. McConnell: If the Court please, I want to make a statement here outside the presence of the jury, and I don't want the Court to think that I am critical of the press or of the Court in making this statement.

I have had marked for identification, as Plaintiff's Exhibits 103, 104, 105 and 106, articles which appeared in the newspapers.

The one exhibit, Plaintiff's Exhibit 103, was
1361 under date of Tuesday, May 3rd in the Chicago Daily News. No. 104 was in the Chicago American under date of May 3rd.

The one in the Tribune was May 4, and that is marked for identification as Plaintiff's Exhibit No. 105, and the one marked for identification as Plaintiff's Exhibit No. 106 was in the Chicago Sun Times of May 4.

The tenor of these articles is that what is before the jury is moot; that is, that your Honor is going to take it away from the jury in any event.

Of course, if the jurors saw that it is highly prejudicial to any consideration of the issue on its merits, because they know what they are doing, as far as they are concerned, is a useless act.

I have no quarrel with your Honor saying that, and I have no quarrel with the press reporting it.

By the Court: I can see your point of view, and I accept it in good faith. I can understand your point of view except for one thing; that whatever appeared in those articles was on a question of law, which never goes before the jury in any event, not a question of fact.
1362 Secondly, it has not disturbed their proceedings, and the articles have all said they are to proceed with their issue undisturbed.

By Mr. McConnell: What I am asking is this, if I may—

By the Court: The offer is well received. They may be received in evidence and accepted and overruled.

(Said documents, so offered and received in evidence, were marked, respectively, as Plaintiff's Exhibits 103, 104, 105 and 106.)

1363 By Mr. McConnell. All I want your Honor to do is to tell the jury not to pay any attention to them.

By the Court: I am going to tell the jury definitely. Is there anything else?

By Mr. McConnell: I have nothing further.

By the Court: All right; bring in the jury.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. I want to say just one word for the record. I have told it to you once before, I think, or twice before.

If you have seen any articles in the papers about this case, I ask you to please disregard them. I don't know whether you have or haven't, and I am not going to ask you that question.

What is being said or done outside the presence of the jury or what appears in the newspapers is entirely foreign to the issue before you. I have told you at the outset that you are to judge the questions of fact. I am to determine the questions of law, so we are partners in this venture, and the same goes and the same will continue throughout the proceeding.

1364 Please, I ask of you sincerely to disregard anything you have heard outside, whether it is on the radio or on television or in the newspapers. You have one simple single question isolated. I have defined it to you. I will define it again in my instructions, and I want your honest, impartial and fair judgment.

Thank you very much.

By Mr. Thompson: Mark these as Defendants' Exhibits 23, 24, 25, 26, and 27, for identification.

(Thereupon the said documents were marked Defendants' Exhibits 23 through 27, inclusive, for identification.)

1365 EARL B. PADRICK, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Thompson.

Q. Mr. Padrick, we had at the adjournment last evening, I think, finished with the report of the proceedings connected with the appearance of Mr. Keeshin before the committee on May 19, 1955, at the Union League Club in the forenoon.

Now will you please tell us the occurrence of the afternoon when Mr. Markin and other spokesmen for the Parmelee Transportation Company appeared?

A. Mr. Markin appeared with several of his associates before the meeting and presented exactly the same proposition that was included in his paper of March 15.

There was a considerable amount of questioning in connection with it. He was asked about the renewal of equipment, and he indicated that he felt that the period over which the renewal of equipment should be made was something that should be determined by the operator.

1366 It was their prerogative to determine when equipment needed to be replaced.

He was asked when he intended to renew the equipment that was now in operation, that was in operation at that time, and he indicated that he had said and would put into a contract that he would spend $500,000 in the renewal of the equipment over the period of the contract, that he expected to spend that much, but again, he said that the question of when equipment was to be renewed was something for the operator to decide, or when that equipment was necessary to be retired.

He was asked about air conditioning of his equipment, as the new equipment came into being, and he felt that

there was no practical need for air conditioning the equipment.

He was asked about radio dispatching, and he indicated that he felt that his telephone dispatching was sufficient to take care of the situation.

He was asked about the transfer of baggage and how it would be handled, and he indicated that he felt that the most practical way of handling it was in the smaller individual trucks rather than trailers and tractors.

The question was asked him as to any labor
1367 agreement that he might have, and he indicated that he had none at that particular time, that is, for the coming years of the contract.

He was asked whether or not he would continue the so-called second escalator clause, that is, the escalator clause in connection with the decrease in number of coupons honored.

After considerable argument, and I think that I probably had more to do with that end of the argument than anyone else — I told him at that time, I said "This is the last go-around, and as a business venture, can't you take your business and handle it in the same manner that the railroads have to handle theirs; if the business goes down and certain trains have to come off, they have to come off, and can't you reduce your overhead to the same extent, and will you give any further consideration to that particular clause?"

1368 They asked for a recess and they left the room.

When they came back, why, he said that I was a pretty hard bargainer, but that he would allow the escalator clause, the second escalator clause on the decrease in business, to be excluded from the contract.

He was asked then about the escalator clause in connection with the one cent for every three cents increase in labor costs.

He indicated that that would have to stay as it was at that time, and he was willing to fix a price of $1.20 the first year.

I think that is about all that I remember.

Q. Was anything said about his justifying the application of the escalator clause or any other economic matter by furnishing profit and loss statements?

A. Oh, he was asked if he would furnish a profit and loss statement, and he indicated that he would not.

Q. Did he give any explanation of why he wouldn't furnish financial reports?

A. Yes, he did. He said that in connection with an endeavor to break down the profit and loss with
1369 respect to simply that portion of the Parmelee operation was an impossible task as there were several of his companies involved in connection with it, and they were interlocking in such a way that he could not get a profit and loss statement on the Parmelee operation alone.

Q. That is, you mean the local interstation transfer operation alone?

A. That is right, the interstation transfer portion alone.

Q. Was the then existing baggage transfer by the Parmelee Transportation Company by these straight-body trucks, small straight-body trucks?

A. They were. That was their operation.

Q. And he did not propose to change that?

A. No, he felt that that was a better operation.

Q. How many times a day was the Parmelee Company then making baggage transfers?

A. The minimum was two a day.

Q. And what did he say about that, as to what he was going to do in the future, if anything?

A. Well, I don't recall specifically that the question was asked as to what he intended to do in the future with regard to that.

Q. Is that that you have recited all that you
1370 remember about the May 19 meeting at the moment?

A. Well, as I recall, we waited a while after Mr. Markin left to determine whether or not there would be an appearance by Mr. Willett. Mr. Holt had indicated prior to that time that he doubted very much that Mr. Willett would appear, and he did not appear.

Q. All right. Then what did the committee do after the day's work was done?

A. Well, they made a roundup of the thinking of the people there at the meeting, and as I recall, it was felt at that time that the offer of Keeshin should be accepted, but they did not take a vote on the matter but desired, apparently, to confer with their superiors as to what had taken place at that particular meeting, and suggested another meeting of the committee later. I believe that date, as I recall it now, though I could be mistaken, was June 3rd.

1371 Q. After this May 19 meeting, did you hear further from Mr. Markin with respect to his bid or the bid of the plaintiff?

A. No, I did not, but I did receive a telephone call from Mr. Sidney Bone that indicated that there had been a change in the proposal of Mr. Markin, and he gave me the facts concerning it.

Q. I show you a document marked as Defendants' Exhibit No. 23, for identification, and inquire if that communication from Mr. Bone came to your attention.

A. Yes; I received a copy of this. I received it on May 23rd. It has our office stamp on it.

Q. Is that the confirmation of the telephone call to which you have just referred?

A. Yes, sir, it is.

Q. What next was done by the committee?

A. Well, the next thing that the committee did was to have a meeting on June 3rd. However, in connection with this conversation that I had with Mr. Bone concerning this letter, he asked whether I thought that communication should be delivered to the committee, and I said, "By all means it should be."

Q. Had Mr. Bone had some doubt about whether he ought to send it out?

1372 A. It seemed to me that he did because of the fact that we had indicated that the last round-up was the May 19 meeting, and he felt that anything received after that time probably should not be considered, but I felt that as long as the letter had been written and the telephone conversation was had, that certainly it should be repeated to the committee for what it was worth.

Q. Now then, on June 3rd where did the committee meet, if you recall?

A. In my office. Not in my office, but in the offices, the meeting room offices on the third floor of the Union Station.

Q. Were the same persons present as far as the railroad committee was concerned at the June 3rd meeting as were present at the May 19 meeting, or do you recall?

A. I don't recall positively that every one were the same persons. I believe there were others there, because the room was pretty well filled.

Q. Well, what occurred at the June 3rd meeting?

A. Well, at the June 3rd meeting Mr. Bone presented his—presented the committee's report, quite a lengthy report in connection with what the committee had done,

1373 and he asked me to elaborate on that to the extent that I thought it was necessary.

Q. Aren't you thinking of the June 13 meeting now of the Terminal Lines about this report?

A. No; I am thinking about the June 3rd meeting at which—I beg your pardon. I am thinking of the June 13 meeting.

Q. All right.

Now, tell us about the June 3rd meeting, separating the two.

A. The June 3rd meeting was a committee meeting presided over by Mr. Bone, and the arrangements again were discussed somewhat, and it was decided by the committee, by vote taken, and, as I recall, only one vote was taken, that the committee would report unanimously in favor of the Keeshin proposition.

1374 Q. Were there questions still in the minds of the committee when they met on the morning of June 3rd that they wanted to have resolved with Mr. Keeshin's appearance?

A. There was one particular question that I recall, yes.

Q. What happened when the committee, when that question was raised?

A. I was directed to get ahold of Mr. Keeshin and ask him to appear before the committee to resolve that question, and to the best of my knowledge that question to me was whether or not in the event of the notification—whether or not in the event there was a notification to Parmelee that their contract would be—well, they didn't have a contract, and I can't say contract—but that their services would no longer be required after the last day of September, and that Parmelee might or their employees might cause a work stoppage—and would he immediately be able to step into the breach.

He said that he would, even if he had to go out and rent the vehicles from Drive Yourself organizations.

Q. Was there anything else? Did he announce at that

time anything of whether he had placed an order?

1375 A. Yes, he did. He indicated that he had already ordered his station wagon and tractor-trailer equipment. There was some surprise about that. The question was raised, "Well, what if you don't get this contract?"

He said if he didn't get the contract he would probably be in the automobile business for a few weeks selling station wagons.

Q. Can you think of anything else that occurred at the June 3rd meeting, other than the vote?

A. No.

Q. I direct your attention to the Defendants' Exhibit No. 24, for identification, and inquire if you have seen that document before?

A. Yes, I have seen this. This is directed to me dated June 3rd by the committee.

Q. What was done with it eventually?

A. A call for meeting was arranged, and that letter accompanied the call for meeting of the Chicago Terminal Lines.

Q. Is that the meeting to which you were referring a few moments ago?

A. It is.

Q. The June 13 meeting?

1376 A. Yes.

Q. Were all the lines represented at that meeting as far as you know?

A. As far as I know all of the lines were represented.

Q. All right. Tell us about the June 13 meeting as far as it had to do with this interstation transfer affair.

A. Well, the meeting was opened, and I asked Mr. Bone to make a report of the committee, which he did, and he asked me then, if there was anything else that I recalled, if I would comment on it, and I didn't recall

that there was anything else I could add other than the committee's report, and there was some discussion back and forth with respect to the matter, after which they called for a vote, and I took a vote, and the vote was unanimously in favor of the subcommittee's report, or in favor of the Keeshin contract, after which I was directed to act as the agent of those carriers and notify Mr. Keeshin that they had accepted his proposal and that also I was directed as their agent to notify Parmelee that their service would no longer be required after the end of September.

1377 Q. I direct your attention to Defendants' Exhibit No. 25, for identification, and inquire whether that is a report of the proceedings of the June 13 meeting of the Lines' representatives?

A. It is.

Q. And I direct your attention to Defendants' Exhibit No. 26, for identification, and inquire whether that is the notice you directed to the Parmelee Transportation people as to the action of the Lines?

By the Court: What was that date, please?

By Mr. Thompson: June 13.

By the Court: Thank you.

By Mr. Thompson:

Q. And what was done with that document after you prepared it?

A. After this document was prepared and signed, I personally delivered this document to Mr. Markin.

Q. On June 13, on the date it bears?

A. I did, on the same date.

Q. I show you Defendants' Exhibit No. 27, for identification, and ask you if that is the notice you delivered to Mr. Keeshin.

A. It is.

Q. And after that was prepared what happened?

1378 A. I sent this letter by messenger to Mr. Keeshin.

Q. On June 13, 1955.

A. On June 13, 1955.

Q. Now, Mr. Padrick, were the negotiations and the final action of the terminal lines in making this 1955 arrangement any different than they had been through the years that you had been connected with the interstation transfer business?

By Mr. McConnell: I object to that; calls for a conclusion of the witness.

By the Court: Objection sustained.

By Mr. Thompson:

Q. Prior to this year 1955, how were the arrangements which were worked out with the Parmelee Transportation Company put into effect or confirmed?

A. In some instances through committee action that was finally terminated at a meeting of the Chicago Terminal Lines, and their vote taken and determination as to what would be done with the proposal. Recommendation was made by someone, and that recommendation was then voted upon and adopted, or in some instances adopted by majority with withheld expressions later to be recorded, usually given five days to record such withheld expressions. Generally it was the same procedure.

1379 By Mr. McConnell: I move to strike that out.

By the Court: The last part may be stricken, "generally the same procedure."

By Mr. Thompson:

Q. Did the terminal lines after it had acted give you directions as to what to do then in these earlier years?

A. Yes. In each instance I was directed to notify Parmelee Transportation Company of the action that had been taken.

Q. Now following the delivery of these notices on June 13—well, following the action of the terminal lines on June 13, were you given directions with respect to formalizing the contract for the new service?

A. I was.

Q. What occurred with respect to formalizing this contract?

A. I was asked to establish a legal committee and arrange for a legal committee to meet with Mr. Keeshin's legal representatives to formulate such a contract.

Q. Were there a number of meetings and revisions made?

1380 A. Yes.

Q. When did you finally agree on the formal contract, approximately?

A. It was in the middle of September.

Q. 1955?

A. 1955.

Q. And then what, with respect to the signing of the agreement?

A. Well, because of some doubt by some of the lawyers as to the way in which authorities had to be given for the signing of such a contract, I was directed to prepare a letter to each of the Chicago Terminal Lines, in which we notified them that it was necessary, if I signed the contract as agent for the terminal lines, that I be given that authority in whatever manner it was necessary for each of the carriers to obtain that authority and furnish it to me.

I did receive from each and every one of the carriers authorization to sign the contract in their behalf as their agent.

Q. Do you remember as of what date the contract was executed between the parties?

A. Yes, it was on September 19, 1955.

1381 Q. Did the contract go into operation or the parties go into operation under the contract on October 1st as contemplated?

A. They did.

1382 Q. Was there any difficulty in making the change-over from Parmelee service to the Keeshin service that you observed on or about October 1st?

A. There were some slight interruptions that I was later advised was caused by some difficulties in connection, apparently, with the employees of the Parmelee Transportation Company.

Q. Well, did the Parmelee Transportation Company abandon the field and leave it to the new transfer service?

A. No, they did not.

Q. How long did the Parmelee Transportation Company continue to undertake to render this service after October 1st?

A. I am not sure of the exact time, but I know that it was more than six months.

Q. During all of this period, the new transfer service was performing under its contract, was it?

A. That is right. Some provisions had to be made at the stations where Parmelee vehicles were parked to provide another space for the acceptance of passengers at those stations.

Q. By the new firm?

A. By the new service, that is right.

1383 Q. What change was made so far as you are aware and can tell us with respect to the handling of baggage after the new service went into effect, checked baggage we are talking about?

A. Well, the provisions called for the railroads to handle the baggage to the tail gate of trucks or trailers, unsorted as between stations.

It was our understanding, not only understanding but contractual, that from that point on, the transfer would be handled the same as in the past by either sorting at

the tail gate or at some other central location, and then delivery made from that point, but the loading onto the trucks or the loading onto the tractors would be a duty of the railroad transfer company.

There was a request made by Mr. Keeshin during the period of the negotiation of the contract in which he felt that there might be a better operation or a faster operation made if the railroad employees were to load the tractors—

Q. The trailers.

A. The trailers or the trucks. It was stated that an alternate proposition was not acceptable, but that if he could negotiate with the railroad for them to pro-
1384 vide this service, there would be no objection as long as there was no interruption in the service.

Following that time, I understand that at two of the stations, he did make arrangements for the railroad employees to load the trailers with the checked baggage, for which he provided a payment to the carriers or to the station.

Q. In other words, it was a matter of private arrangement outside the general contract, is that it?

A. That is correct.

Q. How many times a day was Parmelee transferring checked baggage across the Loop before October 1, 1955?

A. Two a day.

Q. How many times has Keeshin been transferring it?

A. A minimum of four a day.

Q. During the period that the new contractor has been furnishing the service, the Keeshin group, has there been any disruption or even threatened disruption of the service by reason of labor difficulties?

A. No, sir.

Q. Has the subject ever arisen during all this four and a half years?

A. Only with respect to what might happen in
1385 the sixth year.

Q. That is, you mean after this contract?

A. After this contract is up.

Q. Has the Keeshin group ever sought any increase in the coupon rate during the period it has been carrying on the service?

A. No, sir.

1386 Q. Did you, after you made this contract with the Railroad Transfer Service, Inc., or the Keeshin Company, did you do anything with respect to the Interstate Commerce Commission?

A. Yes. I was requested to file the contract with the Interstate Commerce Commission and also with the Illinois Commission.

Q. And you sent the Interstate Commerce Commission a letter and copy to Washington, D. C.?

A. I did.

Q. And to the Illinois Commerce Commission at Springfield?

A. I did.

Q. Is this pickup and delivery service which is provided, that is going out to somebody's house and picking up the trunks and bringing them down and checking them, is that part of the contract between the railroads and the transfer company, or is that a matter of private contract?

A. It is a matter of private contract.

Q. With the customer?

A. That is right.

Q. Has there been any change in the scope or the extent of that service since the Railroad Transfer
1387 has taken over?

A. No, sir.

Q. Any enlarged area that is served?

A. You encompassed something in your question, and I believe that the word "scope" left me for a moment.

Q. All right.

A. The arrangement, as far as it being any part of the contract between the railroads and the operator is concerned, did not change. However, in the operation by Keeshin they did increase the area from which they would handle this checked—this baggage to and from the stations and from the homes have pickup and delivery service, if you want to call it that.

They increased the area outside of Chicago proper and increased that by some fifty additional communities around Chicago.

Q. There has been some reference in a lot of these papers that have been introduced in evidence or marked for identification respecting conversation back and forth about the employment of Volkswagens in this service. What happened with respect to that?

A. Well, the Volkswagens were allowed to be put in service as an experiment. As I recall the discussion at the time the equipment was viewed, it was the 1388 understanding that I got that the experimentation in different kinds of equipment should be carried on by the transfer company.

The Volkswagens were put in service in October. They were not air conditioned. There were some features in connection with this operation that didn't prove practical, although they were a larger carrying vehicle—they carried more passengers, and apparently were low in cost in operation.

They were discontinued and taken out of service. There were ten of them, and they were taken out of service by the first of the year.

Q. And there have been no Volkswagens used since then?

A. No, sir.

Q. You mean the first of 1956?

A. That is right.

Q. The station wagons that were first put in service, were they just standard station wagons with which we are all familiar?

A. Yes, they were.

1389 Q. Were there any changes made in the standard equipment?

A. With this exception. They were a type of station wagon that had the extra seat in the back, but the extra seat had been taken out to be used—the rear of the station wagon to be used as a baggage compartment, and yes, there had been along the period of time from October until the following spring, all of the station wagons were equipped with a partition between the baggage compartment and the passenger-carrying compartment.

Q. Was the baggage carried on the top of these station wagons, any of them, in actual operation?

A. In actual operation, I do not believe that the station wagon was equipped to carry baggage on top of it.

Q. What about other types of vehicles, did they have other types other than the station wagons, passenger-carrying, I mean?

A. They had a special type of body that would carry, I believe it was eleven passengers, and that contained a baggage compartment in the back, and also it contained a rack on top where additional baggage could be handled on top of that type of equipment with a tarpaulin

1390 that could be pulled over the baggage.

Q. Has the Keeshin group made revisions of its equipment from time to time as experience indicated the changes should be made for the service?

A. They have.

Q. Are there any other passenger-carrying equipment employed, other than these station wagons you have described and these coaches that you have described?

A. Yes, they put in a bus, a 20-passenger-carrying bus, because they found at certain times that the load factor was such that it would be to the best advantage in having some of those, of that type of equipment in their fleet.

That is particularly in the summertime and when there is a considerable amount of excursion traffic.

Q. Those large vehicles are used only for those group movements?

A. No, they are not. They are used for any movements, but when the volume of traffic is such that those vehicles can be used to best advantage.

Q. Prior to the take-over by the Chicago Transfer, what type of vehicles for passenger handling was the Parmelee people using?

1391 A. They had two types of vehicles. One was the regular taxi cab type of vehicle, the same vehicle that was on the streets for the handling of passengers in taxi cabs, manufactured on the same lines and by the same company that manufactured most of the cabs on the streets, with this exception, that there was provided in the cab a trunk that unlocked for the carrying of baggage in the rear compartment, and I do not believe that taxi cabs have that trunk. That same type of cab did not have the trunk for the availability of handling baggage.

By the Court: I think I will give the jurors a ten-minute recess.

By Mr. Thompson: I think I will be through in about a minute. I am about through with Mr. Padrick. I think I am through.

By the Court: I didn't know how long you would be.

1392 By Mr. Thompson: I think I will be through in a moment.

By the Court: All right.

By Mr. Thompson:

Q. I think you have described the passenger carrying vehicles of Parmelee?

A. Yes, with this exception, that they did have fourteen or sixteen, as I recall it, vehicles of a larger carrying capacity, and I believe again eleven passengers with a trunk compartment in the back of the vehicle that would take care of the baggage. The transfer of the checked baggage was handled in a small type of trunk. It was the type of trunk that could be used easily in city delivery with a rather short body, convenient, apparently convenient for fast service in tight places.

Q. They had no trailers or tractor types of movement?

A. No, sir.

By Mr. Thompson. That is all.

By the Court: We will take a ten-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1393 By the Court: Bring out the jury.

(Whereupon, the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: All right, gentlemen, proceed, please.

By Mr. Thompson: We offer in evidence, if the Court please, the documents which have been marked for identification as Defendants' Exhibit 5; Defendants' Exhibit 7 and 10 are two parts of one document, so we offer it as one, really; Defendants' 9; and Defendants' Exhibits 11 to 13, both inclusive—

By the Court: Are there any objections, counsel?

By Mr. McConnell: I have no objection to any of them, your Honor.

By Mr. Thompson: (Continuing)—and Defendants' Exhibits 15 to 27, both inclusive.

By the Court: They may be received in evidence.

(Thereupon said documents, so offered and received in evidence, were marked, respectively, as
1394 Defendants' Exhibits Nos. 5, 7, 10, 9, 11, 12, 13, and 15 to 27, both inclusive.)

By Mr. Meserow: I would like to ask Mr. Padrick a few questions, if I may, please.

By Mr. McConnell: What is this, may I ask? Is this cross examination?

By Mr. Meserow: Direct examination.

By Mr. McConnell: Well, I object to more than one counsel on direct.

By the Court: They are different defendants. The only question in my mind is whether he ought to preserve it until you get through with your cross examination. That is the only question.

You may proceed.

Direct Examination by Mr. Meserow.

Q. Mr. Padrick, from your previous testimony, it appears that you had occasion to observe the Parmelee cabs or equipment prior to October 1st, 1955, which were in operation between stations, is that correct?

A. Yes, sir.

Q. Did you ever have occasion to examine or ride
1395 in one of these cabs?

A. I have.

Q. Were they comfortable?

A. As comfortable as a taxi cab.

Q. Did you ever notice their cleanliness, whether they were kept clean?

A. I don't know that I ever noticed the particular cleanliness of the outfit.

Q. Were the Parmelee cabs air conditioned?

A. They were not.

Q. Were they radio dispatched?

A. They were not.

Q. Did Mr. Keeshin—when I say or refer to Keeshin, I am also including Railroad Transfer Service—did they ever use school buses in their operation?

A. Not that I know of.

1396 Q. Had the railroads prior to October 1st, 1955, for five or six years prior to that time, ever made any demands upon Mr. Markin, chairman of the board or president of Parmelee, to submit his profit and loss statements to the railroads?

By the Court: That has been covered. The answer was given to Judge Thompson's questions.

By Mr. Meserow: I think he asked about financial records, not about profit and loss statements.

By Mr. McConnell: He went into it at great length, your Honor.

By the Court: Yes, at great length. Objection sustained.

By Mr. Meserow:

Q. Has Mr. Keeshin submitted his profit and loss statements and financial statements, to the railroads in accordance with his contract?

A. He has.

Q. Did the Parmelee Company employ stewardesses at the railroad stations?

A. They did.

Q. Parmelee?

1397 A. Parmelee, no, they did not.

Q. Does Keeshin Company employ stewardesses?

A. They do.

Q. In addition to agents?

A. They do.

Q. Who pays for the interstation coupon that the traveling public use?

By Mr. McConnell: That was covered by Judge Thompson.

By the Court: I think that has been covered fully.

By Mr. McConnell: There is no contest about it.

By the Court: No contest on that at all.

By Mr. Meserow:

Q. Now there was some discussion here by questions as to whether or not the baggage conditions and rates were fixed with Keeshin some time in May or June of 1955, or later thereto. Can you tell us when the details of the rates on the question of baggage were fixed by the railroads with the Keeshin interests?

By the Court: I think fix is the wrong word. They were fixed by the contract.

1398 By Mr. Freeman: That is right.

By Mr. McConnell: He has got the right word. They were fixed.

By Mr. Meserow: Scratch out the word "fixed", and I will use the word "determined."

By the Court: He may answer.

By Mr. Meserow: Mr. Freeman would know the word "fix" pretty well.

By Mr. Freeman: I do know that word in this instance.

By the Witness: Will you please rephrase or let me have the question, please?

By Mr. Meserow: I will rephrase it.

By Mr. Meserow:

Q. When were the rates on the handling of baggage and the number of pickups—not pickups—the number of

deliveries between stations determined between Keeshin Company and the railroads?

A. In the first instance of the submittal by Keeshin, and I believe that was in December of 1954. It was the understanding that the transfer rate that was submitted would include the handling of the checked baggage from the placement at the tailgate of the baggage by the railroad employee.

1399 Q. In other words, the determination of this rate and the details of handling of baggage was not deferred until after Mr. Keeshin had signed his October 1, 1955 contract, was it?

A. No, sir, not to my knowledge. It was always understood he would handle that baggage.

Q. Did the Parmelee Transportation Company have a strike of its drivers in 1950?

A. They did.

Q. How long did that last?

By Mr. McConnell:: That has been covered.

By the Court: It has been gone over. Over six months, he said, isn't that right?

By the Witness: Yes, sir.

By Mr. Meserow:

Q. Mr. Padrick, Parmelee submitted their first written bid, their first bid, rather, to the railroads in March, on March 15, 1954, and in that bid, which is in evidence here—

By Mr. McConnell: You have the wrong year now.

By Mr. Meserow:

Q. (Continuing) 1955; excuse me—it had an acceleration clause with respect to a decrease in passenger

1400 traffic.

By the Court: I think he has covered that.

By Mr. Meserow: May I ask the question, your Honor? I have not finished my question.

By the Court: All right.

By Mr. Meserow:

Q. And this acceleration clause, according to the exhibit, provided for a one cent per coupon increase for every one per cent decrease in passenger traffic. That was in March of 1955.

At the present time, with the continuous decrease in passenger traffic, what would be the rate that the railroads would have to pay Mr. Markin had he gotten the contract, or Parmelee?

By Mr. McConnell: Judge Thompson went into that.

By Mr. Thompson: No.

By Mr. McConnell: He testified that it was stricken out anyway.

By the Court: Yes; he testified it was taken out before the consummation, and I will sustain the objection.

By Mr. Meserow:

Q. Did Mr. Keeshin have such an acceleration clause in his offer?

A. No, sir.

By the Court: He has answered that before.

By Mr. Meserow:

Q. Did Mr. Markin have a specific offer as to when he would replace his equipment with new equipment?

A. He did not.

Q. I believe you have testified that the Keeshin offer provided for replacement every thirty months?

A. I did.

Q. And has he replaced his equipment within thirty months?

A. His passenger-carrying equipment has been replaced, yes.

Q. After October 1, 1955 when the contract was awarded to Mr. Keeshin and he went into operation, did Parmelee actively solicit passengers at the stations?

A. They did.

By Mr. Meserow: That is all.

1402 By the Court: Do any of the other defendants want to ask any questions before we go on? If not, you may cross-examine.

By Mr. McConnell: Your Honor, a little later in this cross examination I will ask if I may have leave to sit down, because I want to work with documents here.

By the Court: Certainly.

Cross Examination by Mr. McConnell.

Q. This last statement that you made that there was no commitment by Mr. Markin or by the Parmelee Transportation Company as to when they were going to spend the money, wasn't it a fact he was going to spend it within six months to a year after the institution of the contract?

A. I don't recall that that was the answer to the question that was propounded at the time of the meeting.

Q. Well, I am referring now to his proposal of March 15, 1955, which was addressed to you, and which I ask you to examine and call your attention to the last sentence on the second page.

1403 I ask you if that was his proposal? That is Defendants' Exhibit No. 22.

By Mr. Meserow: Your Honor, I object to the question. I was deprived of the right to ask him a question about this March 15, 1954, or rather 1955, offer because it was not the final offer, and therefore I object to this question because this is not the final offer.

By the Court: Objection overruled.

By the Witness:

A. This document states:

"That such undertaking will require the expenditure of approximately $500,000 over a period of from six

months to a year, and we can only make this expenditure if we have a commitment from the railroads that we will be allowed to amortize it to December 31, 1961."

By Mr. McConnell:

Q. You understood, didn't you, that Mr. Markin or his company, rather, was proceeding to spend $500,600 on new equipment?

A. Yes, sir.

1404 Q. Going back to the beginning of your direct examination by Judge Thompson, I understood your testimony was that you were chairman of the Chicago Terminal Lines Association, is that correct?

A. I acted as chairman of the Chicago Terminal Lines committee, which is a committee of carriers, part of whom belong to one association, part of whom belong to another association, and part of whom belong to both associations.

Q. Well, aside from who they belong to or what association, I am going to read you the list of railroads here and ask you if they are members of the Chicago Terminal Lines Association.

1405 The Atchison, Topeka and Santa Fe Railway Company, the Baltimore and Ohio Railroad Company, Chesapeake and Ohio Railway Company, Chicago and Eastern Railroad Company, the Chicago and North Western Railway Company, the Chicago, Burlington and Quincy Railway Company, the Chicago Great Western Railway Company, the Chicago, Indianapolis and Louisville Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago, North Shore and Milwaukee Railway, the Chicago, Rock Island and Pacific Railroad Company, the Chicago, South Shore and South Bend Railroad, the Erie Railroad Company, the Grand Trunk Western Railroad Company, the Gulf, Mo-

bile and Ohio Railroad Company, the Illinois Central Railroad, the Minneapolis, St. Paul and Sioux Ste. Marie Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company and the Wabash Railway Company.

Are those the 21 roads that constituted that association?

By Mr. Thompson: If the Court please, it isn't an association. It has been so testified a dozen times,
1406 To constitute that as a group is all right with me.

By Mr. McConnell: He said it was an association.

By the Witness: I don't believe, sir, that I ever testified to the fact they were an association.

By Mr. McConnell:

Q. All right; I won't quibble about the word. They are a group. You can call them anything you want to.

Is it the group of which you were the chairman?

A. They are the Chicago Terminal Lines.

Q. All right.

Also — were there also included in that some depot corporations?

A. The depot companies were called in to the meetings, yes.

Q. And what were they, again?

A. The depot companies were the Union Station, the Grand Central Station, the La Salle Street Station, the 12th Street Station — Illinois Central, and the Dearborn Street Station. I think I have covered the six — and the North Western Station, but operated solely by the North Western.

1407 Q. And they were all members of this group?

A. All of the operating companies were members of that group, yes, sir.

Q. Well now, you say it is not an association. Did it have any sort of an organization of any kind?

A. No, sir.

Q. Did it have any rules under which it operated?

A. No, sir.

Q. Did it have any by-laws?

A. No, sir.

Q. Who appointed you as chairman of this group?

A. I was appointed or requested to act as chairman of the group by the group.

Q. This group which has no organization, as I understand it, met from time to time on call?

A. They did.

1408 Q. And you issued those calls?

A. I did.

Q. Was the call of a meeting left within your sole discretion, or did someone request that you call a meeting?

A. No, sir; it was not left in my sole discretion. However, on request I called meetings.

Q. Would you call a meeting on the request of any of these member railroads?

A. I would.

Q. These railroads that you have named, are they all competitors of one another?

A. I don't think that all of them are competitive with one another.

Q. They are all seeking to get the money of the passenger, and in that sense they are competitors, are they not?

A. To the extent that on occasion I have known two or more carriers to, on through business, to join together in connection with the handling and solicitation of that through business.

Q. Well, since I am speaking about it, Mr. Padrick, one railroad, say the Pennsylvania Railroad as against the New York Central, those roads are competing

1409 for the patronage of the public, are they not?

A. Certainly between competitive points, but I

couldn't say the Pennsylvania would be competing with the Milwaukee Road.

Q. Because they are not running competitive routes, isn't that right?

A. That is right.

Q. You spoke of the reason for this transfer service as being to equalize the competition between the railroads. What did you mean by that?

A. Between the stations and the railroads. I mean — I meant by that, and I thought I tried to cover it at least fully, and I will try it again, that as an example the Burlington and the Pennsylvania come into the same station, but the North Western and the New York Central do not come into the same station.

Therefore, the station, the intrastation transfer becomes a competitive situation with the crosstown transfer.

Q. And that competitive situation is the competition to get a passenger to travel that particular route as against another route, isn't it?

A. That is correct.

Q. And this system here was designed to equalize
1410 that competition so one would not have a competitive advantage over the other, is that right?

A. That, apparently, is the thought, because they arranged for the payment of it. The railroads arranged for the payment of it.

Q. And the smaller committee, the subcommittee which was composed of the six railroads, those were the chief railroads which were effective, isn't that so?

A. Partly.

Q. Well, wasn't it based upon the volume that they were carrying as compared with other routes?

A. Partly.

1411 Q. What was the other part of it?

A. Because it was felt that each of the six sta-

tions should have representation on the committee.

Q. Then you had the two things involved?

A. That is right.

Q. I think I stated in my opening statement, to which exception was taken, that you at one time or another did act as chairman of this sub-committee. Did you ever act at any time as chairman of the sub-committee at a meeting?

A. I may have in years gone by.

Q. Didn't you, in the course of this negotiation over this contract, at one of these meetings act as the chairman?

A. I did not.

Q. Well, were you there representing any railroad in the sub-committee meetings?

A. No.

Q. In what capacity were you present in those sub-committee meetings?

A. Representing all of the railroads.

Q. Were you there officially, as an observer? You weren't one of the six of the group?

A. No. I think I have tried to explain that. I 1412 was there because of the knowledge of the arrangements that had been in effect for a long period of time, and the knowledge of the negotiations that had been carried on over a long period of time—

Q. Did somebody ask you—

A. I don't think I have answered that question fully.

Q. Pardon me. Go ahead and finish it.

By the Witness: Will you give me the last part?

(Whereupon the record was read as above recorded.)

By the Witness:

A. (Continuing) —and on request of the Chicago Terminal Lines.

By Mr. McConnell:

Q. Which was composed of all of these 21 railroads, six of which were on the committee?

A. That is right.

Q. So that you did attend all of these meetings, is that correct?

A. I don't believe that I attended all of them, but I attended most of them.

Q. With reference to this change or a possibility of a change, let's put it that way, from the Parmelee
1413 Company to some other company, were you asked to contact anybody?

A. I was.

1414 Q. And you were asked to contact Parmelee, were you not?

A. I was.

Q. And who else was it?

A. Chicago Gray Line, Hertz Driv-Ur-Self, the Chicago Hertz Driv-Ur-Self, and later New York Gray Line.

By the Court: You mentioned Willett, too.

By the Witness: No, sir.

By the Court: I thought you did.

By the Witness: I was not the one that contacted Willett.

By Mr. McConnell:

Q. Now when did this discussion first start as to the possibility of a change, and I am talking about discussions in the subcommittee?

A. Well, it was shortly after the meeting that was held early in 1954. The exact date I couldn't tell.

Q. Would it be in July of 1954?

A. I believe that some of the discussions took place prior to that time, but it could have been July.

Q. Wasn't it a fact that the thing that you were
1415 having these outside people come in and submit proposals on was primarily the question of getting a

lower rate on the coupon?

A. That is the way it started, yes, sir.

Q. And that was the sole question, wasn't it, at issue?

A. Finally it did not turn out exactly that way.

Q. I don't mean that it turned out that way, but I mean at that time.

A. At the first appointment of the committee, the reason for the appointment of the committee was to endeavor to determine whether or not we could obtain a lower rate from any other operator.

By Mr. McConnell: Is this document in evidence?

By Mr. Freeman: Yes.

By the Court: You may sit down any time you wish, Mr. McConnell.

By Mr. McConnell: Thank you.

By Mr. McConnell:

Q. I call your attention to a document which is in evidence here. It is a letter which was addressed to you, Mr. E. B. Padrick, chairman of the Western Passenger Association, under date of January 5, 1955, and it
1416 encloses a letter of July 21, 1954, "To All Concerned."

Apparently it was sent to all the list of railroads in your group.

I ask you whether you received that document on or about the time it was written? It is the last letter, Mr. Padrick, that I am primarily interested in.

A. All of these attachments were promulgated by me on January 11, 1955.

Q. Who requested you to promulgate them, as you put it? You mean by promulgate, you sent them around to the different people?

A. Mailed them out, that is right.

It was brought about by a letter from the chairman of the subcommittee dated January 5, 1955.

Q. And that was Mr. Bone of the New York Central?

A. That is correct.

Q. Did you read this document before you sent it out?

A. I presume that I did.

Q. July 21, 1954, was that after these difficulties that you had had with the railroads that you testified about—not the railroads, but with Parmelee, over not being able to get a commitment for labor?

1417 A. Well, I testified, as I recall, sir, to the fact that we had had difficulty in connection with labor negotiations over a long period of years.

Q. Yes. That was in 1947, 1948, 1949, and you had a strike in 1950?

A. That is correct.

1418 Q. So that was all behind this letter that was written here?

A. That is correct. I might say in connection with that, I believe that document is a document that was enclosed with the letter that I received from Mr. Bone.

Q. That is right, but you read it before you promulgated it, as you stated?

A. I did.

Q. And had you had trouble with Parmelee about this so-called profit and loss statement prior to writing this letter?

A. On several occasions during the negotiations requests had been made of Mr. Markin for a profit and loss statement.

Q. Which you hadn't gotten?

A. We hadn't gotten.

Q. And you had had requests for increases in rates prior to this letter?

A. We had.

Q. Now this letter states, which you sent out or which you promulgated, as you say:

"We would have it known that the railroads serving Chicago have enjoyed their relationship with the
1419 Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary and because the greater portion of the transfer fee paid the Parmelee Transportation Company is absorbed by the outbound railroads."

Would you say that that was the view of the railroads as far as you knew at the time that was written?

A. That letter, as I recall it, was prepared by the committee, and I subscribed to it as a member, a working member of that committee, not a voting member.

Q. Then you would sponsor it and did you sponsor it?

A. I would subscribe to it.

Q. And subscribed to it.

A. Yes.

Q. Now, at that time, what was the coupon rate that was being paid to the Parmelee company?

A. At what time, sir?

Q. At the time of this letter which you sent out
1420 or promulgated?

A. I don't recall the exact date on which these changes in rate have been made, but to the best of my knowledge in 1954—

Q. 1954 this is.

A. The rate was either $1.20 or $1.22.

Q. In all of your canvassing of all of these companies, and you canvassed how many—eight?

A. No, I didn't.

Q. No, I don't mean you. I mean your association. You know who were canvassed?

A. More than that, I believe. We tried to get more than that.

Q. Let's get their names. Willett was one?

A. Yes.

Q. Can you name the others? Railway Express, were they in it?

A. Railway Express.

Q. Gray Line?

A. Yes.

Q. Keeshin?

A. Yes.

Q. Parmelee?

A. Yes.

1421 Q. Ayres and Landon?

A. Ayres and Landon, and several others. I think all of them—

Q. Rock Island Transit?

A. Pardon me?

Q. Do you remember the Rock Island Transit?

A. I remember a letter coming from a Mr. Deane.

Q. Dixon, how about them?

A. Yes, I remember they were originally contacted.

1422 Q. Did any of them offer you a lower coupon rate than $1.20 at any time?

A. Yes.

Q. Which one?

A. Willett.

Q. What was his offer?

A. $1.10.

Q. Any other?

A. No, sir, not that I recall.

Q. What was the Willett proposal?

A. Well, it was a very brief letter, as I recall it now, that indicated that they might be interested, but they

would have to—I may be getting the letter mixed up with the interview, the first interview that was had. But anyhow, in the first letter that was sent in, they did mention a rate of $1.10.

Q. Did they stand by that rate or withdrew it or modify it?

A. They modified the rate, and then later withdrew entirely.

Q. So that out of all those people that you interviewed and contacted, the only one that proposed a lower rate was one who withdrew?

A. That is correct.

1423 Q. Now I don't want to get into a quibble with you over what the Parmelee Company is, whether it is the same now as it was earlier, but under the Parmelee Transfer name, the name of the service—and you have been familiar with this for twenty-seven years, I believe you said, didn't you? How many years?

A. Well, probably longer than that.

Q. Well, as long as you have been connected with it, do you know how many rate increases Parmelee had?

A. I believe there were seven or eight.

Q. Isn't it a fact that there have been only three in twenty-seven years?

A. I don't think so.

Q. All right. Do you recall that in 1927, the rate was 85 cents?

A. 1927, I am not sure that I knew exactly what the rate was.

Q. Do you recall that that rate of 85 cents ran until the year 1934?

A. I know that the rate was 85 cents, and it went down to 75 cents.

Q. So there was a decrease in the year 1934?

A. I believe so, yes, sir.

Q. And then it ran at 75 cents until 1942, didn't it?

1424 A. I believe so.

Q. And then it went back to where it was, 85 cents?

A. Eighty-five cents, that is right.

Q. So that in the period of time from 1927 to 1942, the only change in rate was down?

A. That is correct.

Q. Now the 85-cent rate ran from 1942 to 1948, didn't it?

A. I wouldn't--I believe that is correct.

Q. And in 1948, it got up to one dollar?

A. To a dollar, that is correct.

Q. And it ran at a dollar from 1948 to 1952, isn't that right?

A. The exact date I wouldn't recall right now, but it moved from one dollar to a dollar five.

Q. Wasn't it 1952 or thereabouts?

A. That is correct.

Q. So it went up five cents in 1952?

A. That is correct.

Q. And the next increase came in 1954, didn't it?

A. Yes, sir.

Q. And that is the $1.20 we are talking about?

A. But there was a retroactive rate increase.

Q. That was all part of the same negotiation,

1425 was it not?

A. It was, but it was a different rate increase, and you asked me how many rate increases, and I am trying to defend what I answered. It moved to $1.12½ and then to $1.20, and then it moved to $1.22.

1426 Q. All right. That was all part of that negotiation. Now what was the change that was made in

that one negotiation? That is the negotiation after the $1.20 rate.

A. After the $1.20?

Q. Yes.

A. The change after $1.20 was to $1.22.

Q. And there was a retroactive feature of, what was it, 12 cents or 12½ cents?

A. 7½ cents I guess it was, from $1.05 to $1,12½, and it went back to the first of the year retroactively; and then the $1.20 went back retroactively to the first of the particular month that the negotiation was taking place, and I believe that was April.

Q. What did you end up with as your final rate prior to the call of this group, as you call it, in July of 1954?

A. $1.22. I will have to qualify that statement because of the way in which you asked your question, if I may.

Q. You may. Make any qualification you want.

A. At the start of the negotiations, I believe you said, and I cannot recall whether at the start of the negotiation the rate was $1.22 or $1.20, but it did eventually 1427 go to $1.22 during the negotiations.

Q. That was tops?

A. That was the top.

Q. Now can you recall any reductions that were made in the rate, and I am referring now to the rate on transfer of military personnel.

A. Yes. There was a reduction in connection with the handling of military personnel—furloughees, not all military personnel. The reduction was only applicable in connection with the railroads reduced furlough ticket.

Q. That is men home on leave?

A. That is right.

Q. Do you recall that on July 1st, 1942 that rate for those people on furlough was reduced from 85 cents, the regular transfer, to 60 cents?

A. I recall that.

Q. Do you recall further that on July 1st, 1954 it was further reduced to 50 cents?

A. I believe it was.

Q. Now there was an increase in the military rate until it got up in 1954 to 85 cents, do you recall that?

A. That is correct. I would like to call it the 1428 military furlough rate.

Q. Now can you tell us approximately what proportion of your military traffic was involved? I will withdrew that question.

What proportion of your total coupons constituted the military personnel?

A. I don't know. Well, there are three, sir, three questions, I believe, that you asked me there. If you can break them down into three parts, I might be able to answer.

By Mr. McConnell: Read the question, please.

(Whereupon the question was read as above recorded.)

By Mr. McConnell: I don't see more than one question there.

By the Witness:

A. The total military personnel at that time?

By Mr. McConnell:

Q. Yes.

A. I would say the majority of the traffic was military traffic, but not military furlough traffic.

Q. What proportion of it was furlough traffic?

A. I do not know exactly, but it was small in comparison with the total military traffic at that time.

1429 Q. And you are certain that this rate only applied to furlough traffic and not all military traffic?

A. I am sure of that.

Q. We have had some discussion here about profit and loss statements. You were never at any time, were you, on a basis with Parmelee where you were paying them a profit on top of their cost?

A. I wouldn't know that because I never received a profit and loss statement from them.

1430 Q. I know, but you weren't making your agreement to pay on the basis of a profit on costs? It wasn't a cost-plus contract at any time, was it?

A. No, sir.

Q. Never at any time did the variation of their costs change your rate?

A. I don't believe it did. We never received a profit and loss statement.

Q. Never at any time did any variation in their profit change your rate?

A. I don't think it did. We never received such a statement.

Q. All right. Then it didn't, did it?

A. I think I answered that question.

Q. I think you did, and I am trying to get you to reaffirm it.

A. I will reaffirm it.

Q. You spoke this morning in your direct examination about the reason given you why the profit and loss statement of the Parmelee organization was not made available to you was that there were various operations included in the Parmelee setup, is that right?

A. That is right.

Q. That was the fact, wasn't it?

1431 A. That was the fact. That was the reason that was given at the time.

Q. What I am getting at, you know of your own knowledge that is not a false statement, that it is a fact that they do have a number of operations?

A. They do have a number of operations, but the question as to whether or not it was possible to divide the expenses as between the transfer operation company and the others, I wouldn't know.

Q. That is an accounting question?

A. That is right.

Q. You are not charging that the statement that was made is false?

A. I am not.

By the Court: Are we all looking at the clock now?

By Mr. McConnell: It is a good place to stop for me.

By the Court: Two o'clock, please, and mum is the word.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, Wednesday, May 4, 1960.)

1432 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Wednesday, May 4, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1433 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1434 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By the Court: Bring out the jury, please.

(The following proceedings continued in the presence and hearing of the jury as follows:)

By the Court: All right, gentlemen, proceed.

EARL B. PADRICK, called as a witness on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued) by Mr. McConnell.

Q. Mr. Padrick, in your direct examination this morning you spoke about an area of 82 miles from from Chicago, which was excluded from this coupon as being a part of the general fare of the passenger. Do you recall that testimony?

A. Yes, sir. I recall the testimony, but it could have been yesterday.

Q. That was 82 miles outside, and you picked Milwaukee as the point from which to measure it, is that it?

A. The point that has established the competitive
1435 feature that we spoke of earlier in your cross examination of me, it has been decided by the railroads, the competing railroads, the Milwaukee and the North Western, that at Milwaukee, which is 82 miles from Chicago, they would not apply the transfer charge, and that at an area of approximately 20 miles from Chicago is where the full transfer charge is applied, but beyond that point of 20 miles from Chicago, the amount of the transfer charge that is paid by the public would graduate itself downward until it would disappear entirely at 82 miles.

Q. Well, the passenger that wanted to utilize the transfer service had to buy a coupon, didn't he?

A. No, the coupon would be included in the ticket, but he would be paying that charge for the coupon and through ticket.

Q. In other words, if he originated, if his travel originated more than 82 miles outside of Chicago, he got the coupon included in his ticket, is that right?

A. No, sir; that is not the way I stated it.

Q. Well, if he got on a train more than 82 miles outside of Chicago on a travel through Chicago outside of Chicago so he had to transfer himself and his baggage, the coupon was included in his ticket, wasn't it?

1436 A. That is correct.

Q. At no charge to him?

A. That is correct.

Q. But if he got on within 82 miles, then there was a charge made for the coupon, is that correct?

A. No, sir, that is not correct.

Q. No charge made?

A. The charge is on the destination end of it. For example, if the ticket were issued at Gary, Indiana, and it read through to Denver, Colorado, there would be no

charge. The coupon would be included in the ticket, but there would be no charge.

On the other hand, if the passenger bought his ticket at Gary, Indiana, and it was, and the destination might be Wheaton, there would be some charge included in the ticket, but the coupon would also be included in the ticket.

1437 Q. Well, aren't you telling us that he has to pay for his coupon in that situation?

A. In the situation of Gary to the destination end, not from the nearby point, but when it is to a nearby point, and the question that you originally asked me, I believe, was that if he bought his ticket within the area short of 82 miles, would be have to pay for his ticket, and the answer there is no, sir, he would not.

Q. I understand that, and I didn't mean to ask any such question, but maybe I did. I am talking about your second situation where you are going from Gary to Wheaton.

A. That is correct. I believe Wheaton is over 20 miles from Chicago, and under the circumstances a portion of the transfer charge would be paid by the passenger, and a portion of it would also be paid—be absorbed by the receiving railroad.

Q. Well, if the rate or the coupon was higher by one company than another, the traveling public in that last situation would have to pay more, wouldn't they?

A. That question, sir, I cannot answer, because you have asked the question as to whether one railroad
1438 against another, and that isn't—I can't answer the question, because there is no such condition.

Q. I didn't say anything about one railroad as against another. I am talking about one transfer company as against another and the coupon charge.

A. I am sorry. I took it to be railroads. The same

situation prevailed, regardless of what transfer company has been in existence, in business.

Q. Yes, but if transfer company No. 1 charged a higher rate than transfer company No. 2, that would result in a higher charge to the passenger, wouldn't it?

A. It could, yes, sir.

Q. That is all I am trying to establish.

By Mr. McConnell: Mark this as Plaintiff's Exhibit No. 107, for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 107 for identification.)

By Mr. McConnell:

Q. I show you a document which I have marked for identification as Plaintiff's Exhibit No. 107, which purports to be a copy of the amendments to the Parmelee proposal under date of May 20, 1955, which was
1439 submitted to Mr. S. W. Bone, passenger traffic manager, who you have testified was the chairman of this sub-committee, and I ask you if you can identify that as Parmelee's modified proposal.

A. Yes, sir; this was received by me on the 23rd of May, but I received advice from Mr. Bone concerning it by telephone late in the afternoon of May 20th.

1440 Q. Now on that proposal, the top coupon rate that was to be charged during the entire life of the contract by Parmelee was $1.25, was it not?

A. $1.25 for the last two years.

Q. All right. Isn't it a fact that Mr. Keeshin's company is now charging $1.27 per coupon?

A. They are.

Q. In this letter, I want to call your attention to this statement—

By Mr. Thompson: The document isn't in evidence here.

By Mr. McConnell: Well, I offer it in evidence at this time as Plaintiff's Exhibit 107. It purports to be the modification.

By the Court: It may be received in evidence.

By Mr. Thompson: He is putting it in in our case. It isn't his time to put documents in evidence.

By Mr. McConnell: I can put it in with the consent of the Court at any time.

By the Court: Proceed.

1441 (Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 107.)

By Mr. McConnell:

Q. In this document it states, "To date Parmelee has served the railroads for 102 years with no written contract, only the railroads' verbal commitment."

Is that true or do you know?

A. Verbal commitment and letters of understanding, sir.

Q. Now I think you said in answer to Judge Thompson's questions on your direct examination that you were always faced with the question in your mind of whether or not the labor relations with Parmelee would continue from year to year, each time the question came up at the end of each year. Is that right?

A. Not at the end of each year, but if I said the words "continually faced", I did not mean continually faced. I meant that periodically, and by periodically faced with it, yes, it was on almost a yearly basis.

Q. Well, now, as a matter of fact, that was the way you were working with Parmelee, wasn't it, on
1442 almost a year-to-year basis? You had no definite period of time which Parmelee had a contract for.

A. I presume that it could be said that we were working on a day-to-day basis.

Q. That is right. So that Parmelee couldn't do much more than make a year-to-year contract with labor, could they?

A. I can't testify to that.

Q. Well, they had no assurance from you that they were going to have any business with you except from year to year, did they?

A. With the railroads? Business with the railroads?

Q. Yes.

A. It even could have been less than that.

Q. All right. So they had no assurance upon which to negotiate any longer than a year-to-year contract with labor for this business, did they?

A. I can't testify to the fact that over a period of a hundred two years as has been stated here, of a continued situation that they might not be able to negotiate a contract that would be a favorable one and keep from increasing rates over that period of time.

1443 Q. Well, let's just take the time you were there. That is something over 27 years, you said. There was never any time while you were there that they had any assurances from the railroads that they would be able to keep this business longer than a year, was there?

A. I have testified to the fact that there was no written contract, and that there was no verbal contract other than some letters of understanding.

Q. And Keeshin was negotiating a contract with labor, as I understand it, on the basis of having a five-year agreement with the railroads?

A. That is correct.

Q. For which he was going to have the business?

A. That is correct.

Q. Now, do you know the union that Parmelee used?

A. I do not.

Q. It was an AFofL union, wasn't it, the Teamsters Union?

A. Well, it seems to me that there were two unions that was under the negotiations with Parmelee. I believe that one was a drivers' union, and who they belong to, I do not know. But there was another union that had to do with their agents and their clerks, I believe, and that I do know was an AFL union.

1444 Q. And that was a Railroad Brotherhood union?

A. Whether it was a Railroad Brotherhood union or not, that I don't know, but I do know it was an A.F. of L. union.

Q. Did you know that the union Mr. Keeshin proposed to use was the so-called outlaw union, Independent Teamsters Union?

By Mr. Thompson: Well, we object to "outlaw union." I don't know of any outlaw unions.

By the Court: If the witness knows, he may answer. If he doesn't, he may say so.

By the Witness:

A. I don't know.

By Mr. McConnell:

Q. Was there any question in the minds of the committee about whether or not peaceful labor relations could continue with a new union moving in here, superseding the union which was being used by Parmelee?

A. The question was asked of Mr. Keeshin, I believe it was in the May 19th, and also in the preceding meeting, by the committee, and he gave assurances of the fact that over the three year period there would be no labor difficulties.

Q. Did he tell you what he had done with refer-

1445 ence to that subject?

A. Yes, he did.

Q. What did he tell you?

A. He indicated that he was ready to sign an agreement with the labor union, the same organization that

was handling—the same organization under which he had a drivers' contract with other of his operations.

Q. Wsn't that with Mr. Edward Fenner of the Drivers' Union, Local 705?

A. Later I found that out.

Q. Now actually, you did have some labor troubles, jurisdictional labor troubles, when the Parmelee operation ceased and the Keeshin operation started, didn't you?

A. Not that I was personally aware of.

Q. Do you recall any discussion with Mr. Keeshin on this subject after the contract went into effect?

A. There was some discussion in connection with station handling of checked baggage, yes, I remember that.

Q. What was that?

A. It was in connection with whether or not Keeshin would handle the loading of the trucks at two of the 1446 stations or whether he would pay the railroad for having their employees load the trucks.

Q. All right. What was the outcome of that discussion?

A. The final outcome of it is in the operation today, and that is that at the North Western Station, there is a payment made to the North Western for North Western employees loading the trucks, and I believe the same situation is also true at the La Salle Street Station.

Q. Now you received, as I understand your testimony, Mr. Keeshin's proposal December 15, 1954. When I say "you", I am talking about your sub-committee.

Was there ever any change in the rates which he proposed after that first proposal, December 15th?

A. The first proposal had the first year at $1.20 with an escalator clause of one for five, that is one cent increase for each 5 cents of increase in wages.

Later he submitted a fixed rate for the first three years, $1.20, $1.22, and $1.23, and with the same escalator clause that I just mentioned for the last two years of the contract.

Q. And when was that proposal submitted?

A. I don't remember the exact date. It was during the negotiations.

1447 Q. Was it after December 15th?

A. Yes.

Q. Was there any discussion with him to try to get him to put a ceiling on that escalator clause?

A. There was a discussion that took place, as I recall it took place on May 19th, that some one of the committee asked the question as to if he had any possible knowledge of how much the escalator might run, that is, the wage escalator.

1448 Q. Well, was there any request that he put a ceiling on it?

A. I didn't hear a request that he put a ceiling on it, no, sir.

Q. Didn't he refuse to put a ceiling on it?

A. I didn't hear him refuse to put any ceiling on it, because I did not hear any request for him to put a ceiling on it.

Q. He didn't put any ceiling on it at any time, did he?

A. No, sir.

Q. You told us this morning, as I remember your direct examination, that at the meeting of May 19 this committee of six had reached the opinion that this contract should go to Keeshin. Is that what you said?

A. I don't know positively. It seemed to me to be the tenor of the meeting, but there was no vote taken, so I couldn't be assured of that, and I testified to the fact that there was no vote taken at that time.

Q. I call your attention to a document which has been

received here in evidence as Plaintiff's Exhibit No. 9 on the subject of the Parmelee transfer from Mr. An-
1449 derson to Mr. Duffy. Do you know those gentlemen?

A. I do.

Q. Did you ever see that document before? (Exhibit handed to the witness.)

A. I do not recall having seen that document before.

Q. Well, who is Mr. Anderson?

A. General passenger traffic manager of the Santa Fe Railroad.

Q. And he was on this committee, was he not?

A. The Santa Fe Railroad was named on the committee, but I believe that the man who participated in the arrangements was Mr. Sloan.

Q. Well, do you know whether he was there on May 19, at your meeting on May 19?

A. I believe I have testified to the fact that I knew that Mr. Sloan was there, but of others that were there—and there were several—I don't know that Mr. Anderson was there. He could have been, but I don't know that he was.

Q. All right. I am reading from a document which is in evidence, in which it is stated:

"We have operated with Parmelee without a con-
1450 tract, but it is felt that in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of passengers and baggage effective July 1, 1955, with an increase of one cent in the coupon rate for each three cents of wage increase with a maximum of a five-cent increase over the five-year contract and a maximum coupon rate in each year

as follows: July 1, 1956, $1.22; July 1, 1957, $1.23; July 1, 1958, $1.24; and July 1, 1959, through June 30, 1960, $1.25."

Was that the proposal?

1451 A. May I ask the date of that letter, please?

Q. Yes, sir; it is May 23rd, 1955.

A. I thought so. It takes in not only the May 19 meeting but also the final proposal that was made by telephone and then in writing by the Parmelee company of May 20.

Q. Well, then, it was his proposal?

A. That is right.

Q. Mr. Markin states that he will spend $500,000 in the next 18 or 24 months if he is a successful bidder to replace trucks with a new type of vehicle. Do you recall him stating that?

A. I don't argue with the fact he said he would spend $500,000 in connection with the purchase of new equipment. He did say that.

Q. Well, I thought you said in your direct examination this morning that you didn't know when he was going to spend it, that he had never made any commitment to spend it at any time.

A. I beg your pardon. I didn't say anything of the kind.

Q. All right, fine; we are in agreement.

A. I said he did say, and I said that several times in my testimony, that he indicated that he would

1452 spend $500,000 on new equipment. I said that he did not say or that he did not place any time of replacement of equipment, and he did not.

Q. All right. Here he says further:

"If he is a successful bidder to replace trucks with a new type of vehicle and add 30 new 12-passenger limousines to his present fleet of 20 which

will enable the retirement of the older 7-passenger limousines. The other Parmelee services will be continued unchanged, baggage transfers being handled on a two-a-day basis which has been satisfactory." Was that the proposal?

A. There is one part of what you are asking me to testify to now that I must straighten out to keep my previous testimony in line.

Q. All right; you can straighten out anything you want. Just go right ahead.

A. Thank you, sir.

There was, and I did testify to the fact that $500,000 would be spent by Parmelee company in obtaining new equipment. I testified to the fact also that when he was asked on what regularity he would replace this
1453 equipment, he said that he would replace it at the discretion of the operating company, that he felt that was their prerogative.

Now, in connection with the first replacement of equipment that was old to start with, I have no quarrel with that, but I do say this; that he did not and he never answered the question of whether 24 months or 30 months or after the first wave of new equipment was purchased, when it would be replaced. It covered a period of amortization of six and a half years. That is what I testified to, and I will stand by it.

Q. All right. I am just asking you this; whether this statement is true which was made by Anderson that:

"Mr. Markin states that he will spend $500,000 in the next 18 or 24 months."?

A. That is true.

1454 Q. All right. Continuing, he says:

"There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago Terminal Lines. We propose to recommend the con-

tinuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition we will avoid the possibility of labor trouble in connection with operation by a new company with a different union."

There was one member at least on that committee that was not in agreement on Keeshin, isn't that right?

A. Apparently from that letter, but that is not the tenor of the meeting that I indicated when I left it.

Q. Well, Mr. Duffy was his superior, was he not, 1455 and he is reporting to Mr. Duffy?

A. Vice president of traffic of the Santa Fe Railroad, yes, sir.

Q. Who was Mr. Small?

A. He is the general passenger agent of the Illinois Central Railroad.

Q. Of the Illinois Central?

By Mr. Thompson: No.

By the Witness: Mr. Small?

By Mr. Thompson: Mr. Small.

By Mr. McConnell:

Q. Mr. Small is with the North Western, isn't he?

A. Pardon me. I was think of Mr. Smart. Mr. Small is in the freight department, freight traffic manager of the North Western Railroad. You are correct.

Q. And Mr. Feucht was president of the North Western, was he not?

A. He was at that time, sir.

Q. I show you a document which has been marked for identification as Plaintiff's Exhibit No. 5, which pur-

ports to be a report under date of May 27 from Mr. Small to Mr. Feucht.

By Mr. Freeman: It has been admitted.

1456 By Mr. McConnell: Is it in evidence?

By Mr. Freeman: Yes.

By Mr. McConnell: All right.

By Mr. McConnell:

Q. I won't show it to you. I will just read from it. Mr. Small writes to Mr. Feucht under date of May 27, 1955:

"The passenger traffic officers' committee, which has been negotiating, consists of the following railroads with Mr. Padrick, chairman of the Western Passenger Association, included: New York Central, Pennsylvania, Illinois Central, Santa Fe, Baltimore and Ohio, Chicago and North Western. The attached statement is a brief outline of the present arrangement with Parmelee and the arrangements proposed by Parmelee and by Keeshin. The Willett Company has indicated they are no longer interested. It is the view of our passenger people, and I understand the same view is held by the committee members from the

1457 other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."

Do you still take the position that it was the unanimous view of this committee that they were going to vote for Keeshin on May 19?

A. I did not say that.

Q. I thought I just asked you whether you did?

A. I did not say that.

1458 Q. Well, is it or is it not your position now that that committee was in favor of Keeshin or in favor of Parmelee on May 19?

A. It was my opinion as an individual on that committee that the concensus of the meeting was that they were in favor of the Keeshin proposal at that time, and that is before the letter of the 20th.

Q. That was May 19th?

A. Yes, that is right.

Q. Well, look at this letter.

Isn't he referring to the meeting of May 19? There wasn't any other meeting, was there?

A. The date of this letter is May 27, and I would like to say there that they took into consideration not only the proposals that were made at the May 19 meeting to which I referred and testified to earlier, but also the later proposal of May 20 by Parmelee. That could have changed somebody's mind.

1459 Q. Wasn't your testimony this morning as follows:

"They made a roundup of the thinking of the people there at the meeting, and as I recall, it was felt at that time that the offer of Keeshin should be accepted."

A. I still stick by what I said.

Q. Well, that is a little different from Mr. Small's view. Do you agree to that?

A. I will agree to it, and I will agree to it because of one situation only, and that is because after the meeting on the 19th, there was a change made in the bid of Parmelee, and that could have changed the minds of some of the individuals.

Q. All right. What was that change?

A. You presented it here in testimony in a letter.

Q. This letter, Plaintiff's Exhibit 107?

A. I believe that that is it. If you will let me see it I will be glad to—

Q. You may have it.

A. Yes, sir, that is the one I refer to.

Q. Attached to this document, which is in evidence here as Plaintiff's Exhibit 5, is a comparision of the two proposals.

1460 Will you examine that and tell us whether that correctly states those two proposals; what the differences are or what they each are.

A. With the exception of a few minor details, that would be my understanding.

Q. Who was Mr. Brennan?

A. Mr. Brennan, I believe, at that time was either passenger or traffic manager or general passenger traffic manager of the North Western Railroad.

Q. Was he also present at that May 19th meeting?

A. He was.

Q. I call your attention to a statement made by Mr. Brennan on the last page, Page 5 of this document marked for identification Plaintiff's Exhibit 2, and ask you to read that—not out loud, but to yourself.

A. I notice that this is also dated May 23.

Q. Yes. You notice also that it shows Mr. Brennan is in favor of the Parmelee people, don't you?

A. I can't testify to that because I have been permitted to read only the latter portion of the document.

Q. Read it all.

By Mr. Thompson: If the Court please, the docu-
1461 ment isn't in evidence. To have the witness sit here and read three pages of a letter somebody else wrote is certainly a waste of time.

By Mr. McConnell: He says he can't tell me unless he reads it.

By the Court: He may read it.

By the Witness:

A. He indicates that as a request that they be permitted to cast a vote in favor of Parmelee.

By Mr. McConnell:

Q. That was right after the May 19th meeting, wasn't it?

A. Yes, sir.

And also after the letter or the telephone call to Mr. Bone of May 20th.

Q. All right. Now after this time, let's include in this the phone call or the modification which I showed you here, which is under date of May 20, 1955, which is Plaintiff's Exhibit 107, there were no new proposals of any kind back and forth by either of these parties, were there?

A. No, sir.

Q. That was it, wasn't it?

A. Not that I recall.

1462 Q. That was it?

A. Yes, after the proposal of May 20th by Parmelee.

Q. So that somebody changed their vote after that. It didn't come about by any change in the proposal?

A. Well, changing of a vote, I don't know how a vote could be changed when one was not taken at the May 19th meeting.

Q. All right, indication of opinion. If the opinion changed, it wasn't because of any change in proposals? That is what I mean.

A. I claim that it was.

Q. All right, what proposal?

A. The May 20th proposal could have changed the thinking of the meeting of May 19th.

Q. And changed it in favor of Parmelee?

A. I don't know whether it changed it in favor of Parmelee by all or not.

Q. Well, you know that it changed it in favor of three, at least.

A. You have indicated that.

Q. At least they were indicating their vote in favor of Parmelee at that time?

A. That is correct.

1463 Q. What I am asking you is this, that after that proposal was received, was there any other proposal from Markin or Parmelee or from Keeshin or from his company made?

A. None that I know of.

Q. I show you a document which has been marked for identification as Plaintiff's—apparently it has been received in evidence as Defendants' Exhibit 21, which is a letter on the letterhead of the Parmelee Transportation Company, under date of March 15, 1955, addressed to you, and signed by the Parmelee Transportation Company by Morris Markin, Chairman of the Board.

I ask you if you received that letter and read it.

A. This is the same one that I testified to a while ago that I did receive, and I read it, and transmitted it to the committee.

Q. Now I notice that you drew a circle around paragraph 3 on the third page of this. Did you do that?

I said you did it, but I don't know whether you did or not. I am asking you whether you did.

A. I believe those are my markings.

Q. That is when you agreed to take out the

1464 escalator clause, isn't it?

A. No, sir.

Q. What is it?

A. This was made as a reminder to me in my file that in a meeting with Markin, we indicated to them that we would not under any circumstances accept, that the railroads would not accept an escalator clause based upon the rise or fall of business.

Q. And he agreed?

A. He did not agree at that time.

Q. Well, he did agree eventually, didn't he,
A. He agreed on May 19th, yes, sir.
Q. And took it out?
A. He took it out at the May 19th meeting.
Q. Now he says in this letter to you:

"You will recall that towards the end of 1954, we were advised by you that a committee had been appointed by the railroads to explore the possibility of securing a lower rate for the services then and presently performed by Parmelee Transportation Company, and that they had offered the following suggestion:

"1. that a study be made of the possibility of operating a fleet of tractors and trailers for the transfer of baggage between railroads."

Had you suggested that to Mr. Markin?

A. The committee did not. That did not—I think Mr. Markin was a little confused with respect to where that came from. The committee did not recommend the use of trailers or tractors to Mr. Markin, but at a meeting the Chicago Terminal Lines, in which a study of all of things that were being performed by Parmelee were considered, and to try and endeavor to find ways and means of cutting the cost so that the coupon rate would skyrocket, then we endeavored to suggest at that meeting, and I believe I was chairman of that meeting, whether or not he had ever given consideration to the use of tractors and trailers for the operation. That was some-time well in advance of the May 19th meeting.

Q. Now he wrote back and he tells you:

"We have made an exhaustive study of these suggestions and have come to the following conclusions:

"One, regarding the operation of a fleet of tractors and trailers for transfer of baggage:

"A, the loading and unloading facilities at the depots are not adequate to accommodate the many trailers which would be required to perform this baggage service as the trailers would stand idle to wait being loaded from time to time by the railroad baggagemen until pickup time;

"B, the railroad baggage employees would be required to load and unload the trailers, and we have found that this kind of work is not being done presently at all depots and it is doubtful if the employees now doing this kind of work could be required to do it without additional compensation and sanction from their union;

"C, the initial investment required for the change-over in the type of equipment which we are presently using to trailers, which would be used solely for storage between pickups, could not be justified;

"D, the driver manpower savings which could be
1467 effected by a tractor-trailer operation would be offset by the additional cost of loading and unloading of the baggage by the railroads because a tractor driver is not permitted by the union to help load or unload;

"E, the quality of service would be impaired because all of the railroads would not receive equal service."

Then referring to the second suggestion:

"In order to meet a fixed schedule and to provide a better service, it would be necessary for the railroads to coordinate train arrivals and departures, and as you know, this could not be accomplished due to conditions beyond the railroads' control. Without such coordination, a fixed schedule would destroy the flexibility of the service to the detriment of the passengers."

Now, he says:

"On February 4, 1955, we were advised by you to abandon the first two ideas and concentrate our efforts on the third suggestion regarding the possibility of
1468 reduction in the price of coupons through economies to be obtained without any impairment of our present service, and this has been given a great deal of study."

Now what I want to ask you is, did you on February 4, 1955 advise Mr. Markin to abandon these first two ideas?

A. I don't recall that that was the exact verbiage used, but it was very apparent that we were not going to get any place wtih discussions because of the fact that he had stated that the cost of replacing equipment would be so much that the saving would not be, could not be had, and under the circumstances, why, we felt that there was no use in arguing anymore with him about it.

Now I do not agree, however, with the facts as he outlined them in his letter as far as my observation of the facilities were concerned.

1469 Q. Well, you didn't write any answer back in response to this, did you?

A. No; I was directed to advise him along the lines that he stated, but not specifically.

Q. Who was Mr. Dean?

A. Mr. Dean—I don't know his specific title, but he is station superintendent of the LaSalle Street Station, or at that time he could have been in charge of the baggage service at the LaSalle Street station. I know of him, but his specific title I do not know.

Q. Well, would he know whether or not the work could or could not be reduced by the use of trailer trucks in this operation, do you think?

A. Well, I am not sure that he would know that. I don't believe that Mr. Dean has ever had any experience in the trucking business.

Q. Would it be a fact that the use of trailer trucks would call for a supplementary service to handle corpses?

A. I might go back a ways and indicate that in connection with the handling of corpses in trucks, that the committee, the Chicago Terminal Lines, were never quite satisfied with that.

1470 Q. Well, if they weren't satisfied with that, they wouldn't be satisfied with putting them in trailers, would they?

A. No, sir, they would not.

By Mr. Keating: I object to that question, your Honor, and I object to the witness testifying about all the railroads in Chicago.

By the Court: I didn't quite get the objection. What was the objection?

By Mr. Keating: I am objecting to the witness testifying as to what all the railroads in Chicago thought or what they believed or what they understood. Obviously, it is a state of mind, and obviously he is attempting to testify what some twenty-one companies contemplated or thought.

By the Court: What was the last question?

(Thereupon the record was read as above recorded.)

By the Court: I will sustain the objection to the form of the question.

By Mr. McConnell: I want to point out to your Honor that this witness has testified he was the agent of the

1471 twenty-one railroads.

By the Court: Yes, but that isn't the basis for sustaining it. What he testified to in meetings was his own reaction to it, but the form of the question is what I am sustaining the objection to.

By Mr. Keating: Your Honor, I believe the witness testified he was the agent only for signing the contract.

By the Court: That is correct.

By Mr. McConnell: He testified he was the agent representing all the railroads sitting in this subcommittee.

By Mr. McConnell:

Q. Isn't that right?

A. I was acting as chairman of the meeting at which all of the Chicago Terminal Lines met, and I was directed by those lines to represent other than the lines that were named on the committee on that committee, without right to vote.

By Mr. Freeman: Would this be an appropriate time for a short recess?

By Mr. McConnell: I have one more document I can finish with here before you break.

1472 By the Court: All right.

By Mr. McConnell:

Q. I will show you a document which is marked for identification, which is in evidence—

By Mr. Freeman: It is not in evidence.

By Mr. McConnell:

Q. (Continuing) —identified as Exhibit No. 7.

By Mr. Freeman: I am sorry, Mr. McConnell. It is in evidence.

By Mr. McConnell: I thought it was.

By Mr. Thompson: Get together.

By Mr. McConnell:

Q. And I ask you whether or not you have seen that document before or the original of it. It is a photostat of a document.

A. I do not recall ever having seen it.

Q. Well, it is in evidence here.

By Mr. Thompson: Let me see it.

By Mr. McConnell:

Q. And I want to read to you from it.

By Mr. Thompson: All right.

By Mr. McConnell:

Q. This is Plaintiff's Exhibit No. 7, which purports to be a letter from J. L. S., J. L. Sloan to Mr. R. T. Anderson. Do you know those gentlemen?

1473 A. I do.

Q. Under date of February 15, 1955.

Was there a meeting of the Chicago Terminal Lines February 1?

A. I wouldn't recall the date right now.

Q. All right. Maybe this will refresh your recollection a little. I don't know whether it will, but we will try.

"At a meeting of the Chicago Terminal Lines February 1 report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately the same rate Parmelee is now charging and one bid for transfer of baggage only. Chairman Padrick advised the Lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

1474 Did you so advise the Lines?

A. I don't believe that that states that I advised the Lines. I believe it states—I will say now that you have refreshed my memory of the meeting. That is the first thing. I will answer that question.

Then, in connection with the last question that you have just asked me, I do not believe that I advised the Lines as you intimate, that it was my opinion that the rate should be $1.00 to $1.10, but I advised the Lines that that was my understanding of the committee's view, and

everyone that was on the committee was sitting there in the meeting at that time.

1475 Q. And they didn't get up and object to your statement of their view?

A. They did not.

Q. I thought what I asked you was whether it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company.

Was it the view of the committee?

A. Yes.

Q. And the committee you are referring to was the committee of six railroads which were dealing with this problem?

A. That is correct.

By Mr. McConnell: Now I am ready for the recess, your Honor.

By the Court: All right, ten minutes.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1476 By the Court: All right, bring out the jury, please.

(Thereupon the following further proceedings were had in the presence and hearing of the jury:)

By the Court: Those ten minutes get longer, don't they?

All right; proceed.

By Mr. McConnell:

Q. After this Keeshin Company went in, as you testified this morning, there came a time when they started to do the work that was previously done by the Parmelee Company. They had employees who had not been doing this work before, isn't that true?

A. I could only assume so. I do not know where their employees, all their employees, came from.

Q. Well, you told us this service was unique in Chicago, and that Parmelee was the only one that was doing it and that Keeshin had never done it before. Do you agree with all those statements?

A. I do.

Q. So that the Keeshin Company or its personnel had never had any experience in this transfer business?

A. I can't testify as to that because I don't know 1477 exactly who all their personnel were.

Q. Well, you knew that the Keeshin Company had never been in existence before their agreement with your company? Don't you know that?

A. That is correct.

Q. And hadn't Mr. Keeshin told you and your committee, and hadn't you found out in the course of your investigation of him, that he had never been in this business before?

A. Yes.

Q. So that isn't it a fact that there was bound to be some disruption of the service at the time it was giving up one service and taking up the other?

By Mr. Meserow: I object to the question; calls for a conclusion, your Honor.

By the Court: Objection sustained. He may answer yes or no.

By Mr. McConnell:

Q. Was there any disruption of service so far as you know?

A. I believe I previously testified, and I will testify again, to the fact that I never heard of any disruption in service.

A few minor situations arose that came to my 1478 knowledge that indicated that there had been some

difficulty in connection with differences in employees, one company as against the other.

Q. Didn't you get some complaints from the railroads that service wasn't being performed properly?

A. As I recall the situation, there was a meeting called after the operation was in effect for a short time, and I believe that that meeting was called at the request of the Keeshin operators to determine what, if any, improvement could be made in the service.

1479 Q. You didn't call any meeting at the request of any carrier?

A. It could have been the request of the carriers, yes, also.

Q. Well, before I go to that I want to go back to something else. You told us this morning that you filed a contract with the Interstate Commerce Commission, is that right?

A. Yes, sir.

Q. There was no rule that you had to file that contract with the Interstate Commerce Commission, was there?

A. In my knowledge of the operation, there is a possibility that we did not have to file, but there were others that felt that it should be filed, and in view of that situation and on request I filed the document with the Interstate Commerce Commission.

Q. Hadn't the Interstate Commerce Commission declined to take jurisdiction over this transfer business here in Chicago?

By Mr. Meserow: Your Honor, I object to this line of questioning as asking for legal conclusions. This man is not a lawyer.

By Mr. McConnell: He knows what happened.

1480 By the Court: He may answer.

By the Witness:

A. As I recall, some years back I appeared as a witness on behalf of Parmelee in a case in which the Interstate Commerce Commission was determining some subjects. I am rather vague on that right now.

By Mr. McConnell:

Q. Well, didn't they hold they had no jurisdiction over the transfer business?

A. I believe that they did.

Q. You know they did, don't you?

A. I said I believe that they did.

Q. Going back to the differences in service between the Parmelee people and the Keeshin, do you recall that Parmelee permitted the passenger, the railroad passenger, the use of his coupon to get from the railroad station down to the Loop?

A. Yes; I remember that Parmelee provided that service.

Q. And that service was not provided by Keeshin or his company, was it?

A. It was not.

Q. So that under the Keeshin handling of the transfer business, the passenger had to pay for a taxi cab ride or walk or use his own car, isn't that right?

1481

A. That is correct, I presume.

Q. Do you recall that there was an arrangement when Parmelee had this transfer business whereby passengers who got off at the Englewood Station were allowed to use their coupons for the full credit on the taxi cab fare?

A. I believe originally that Parmelee provided a service at the Englewood Station. The question, as you put it, I do not know.

Q. You don't know that they allowed, that they redeemed from the taxi cab companies the full face value of the coupon as applied on a taxi cab fare?

A. I do not know that. I think if I had I would have confronted Mr. Markin with that situation, because he turned us down on that same proposition at the other stations.

Q. Well, it was of some importance to the carriers, wasn't it, to have that sort of service at the Englewood Station?

A. I believe it would be.

Q. And that was not provided by Mr. Keeshin's company or Mr. Keeshin or anybody connected with Mr. Keeshin, isn't that right?

A. No, sir, it wasn't.

1482 Q. Did you ever make any investigation of the committee—did the committee make any investigation of Mr. Keeshin's financial responsibility?

A. As far as I personally was concerned, I did not. I thought that I had a little bit of background over a long period of years of his financial situation, and I believe the other carriers—and the carriers did, too.

Q. Had one of his companies, a freight line company, been in bankruptcy?

By Mr. Meserow: I object to that question, your Honor. There is no showing it was his company.

By the Witness: Pardon me, but I did not—

By the Court: Objection sustained.

By Mr. McConnell:

Q. All right. What is the pickup and delivery service that was given by the transfer company?

A. It is a service from the station of checked baggage to the home or hotels, from the home or hotels to the station in connection with traffic moving into and out of Chicago proper.

Q. Do you know what the rates were that were
1483 charged by the Keeshin Company?

By Mr. Thompson: We objection to this, first as

improper cross examination, and secondly, it has nothing to do with this contract.

By Mr. McConnell: It has something to do with the traveling public, I would say.

By the Court: Objection sustained.

By Mr. Thompson: Which has nothing to do with the contract.

By Mr. McConnell: It has to do with the rate which is charged the public, your Honor, for the use of the service.

By Mr. Thompson: No.

By the Court: Not on the contract.

By Mr. McConnell:

Q. It is in the contract, isn't it?

A. No, sir.

Q. Wasn't there a supplemental contract covering that?

A. No, sir.

Q. I will go on to something else while we are looking that up. Do you recall that the billings on the 1484 coupons were for fifteen-day billing by the Keeshin Company as compared with the thirty-day billing of the Parmelee Company?

By Mr. Thompson: We object to that as immaterial to any issue in this case.

By the Court: Read the question.

(Thereupon the record was read as above recorded.)

By the Court: Objection sustained.

By Mr. McConnell:

Q. How many employees—do you know how many employees the Parmelee Company had at the time they gave up their service?

By Mr. Thompson: I object as immaterial and improper cross examination.

By Mr. McConnell: He went into the service as to what was and whether it was adequate, whether it was proper,

and I am trying to show that we had more service than they did.

By the Court: He may answer.

By Mr. Thompson: The number of employees won't establish it. It was a lack of efficiency probably if
1485 they had to have more employees to do a better job or a poorer job.

By the Witness:

A. I do not know.

1486 By Mr. McConnell:

Q. Isn't it a fact that they had almost twice as many employees as the Keeshin group?

A. I don't know.

By Mr. Thompson: I object to that, as he said he didn't know.

By Mr. McConnell:

Q. I will show you a provision in the contract with the Keeshin company referring to baggage pickup and delivery service. Is that in the contract?

By Mr. Thompson: We object to any examination of the content of the contract. It isn't in evidence.

By Mr. McConnell: He said it wasn't in the contract. That is what he testified to, and I have called his attention to where it is.

By the Court: You say the contract is not in evidence?

By Mr. Thompson: The contract is not in evidence, and we object to examining the content of it.

By the Court: I will let him examine it.

By the Witness:

1487 A. There are two different areas here in which you were questioning me, I believe.

By Mr. McConnell:

Q. The question was—

By the Court: I don't think we ought to discuss the contents of the contract, if it is not in evidence. The only

question is, does it refresh your recollection? That is all.

By the Witness: This refreshes my recollection as to one portion of the question.

By the Court: What is the question?

By Mr. McConnell:

Q. Isn't it the fact there was a provision in there about baggage pickup?

A. There is a provision in here about baggage pickup and delivery service.

1488 By Mr. McConnell: I don't know why this isn't in evidence. I thought Judge Thompson was putting it in, but I guess he didn't. It is identified as Plaintiff's Exhibit.

By the Witness: There is nothing in there about price of pickup and delivery service.

By Mr. Thompson: I can't hear what he is saying.

By Mr. McConnell: I move to strike it out.

By the Court: It was in answer to your question.

By Mr. McConnell: I didn't ask him what was in the contract.

By the Court: You asked him if there was a pickup provision, and he said yes, but not as to price.

By Mr. McConnell: All right. I would like to offer this in evidence, so I can examine the witness on it, as Plaintiff's Exhibit 100.

By Mr. Thompson: No objection.

1489 By the Court: No objection, Judge?

By Mr. Thompson: No.

By the Court: It may be received. I thought it was in evidence, but I am satisfied—

By Mr. Thompson: This is the one they offered with the bobtail on it.

By the Court: I recall that, but I was under a misapprehension.

By Mr. Thompson: Now it is in for all purposes.

By the Court: It may go in.

(Thereupon the said document, so offered and received in evidence, was marked Plaintiff's Exhibit 100.)

By Mr. McConnell: I thought it was in once on a motion that was made.

By the Court: It is in now.

By Mr. McConnell: I will ask the reporter to mark this in evidence.

By Mr. Thompson: It is marked.

By Mr. McConnell: It isn't marked in evidence. I am asking that it be marked in evidence.

1490 By Mr. McConnell:

Q. Will you point out to us what provision has to do with the pickup service?

A. Item 9.

Q. Do you recall that there was a pickup service under the arrangements with the Parmelee Company on Sundays?

A. I do not recall that service was performed every day of the week.

By Mr. McConnell: Read the answer, please.

(Thereupon the record was read as above recorded.)

By Mr. McConnell:

Q. Do you recall that under the Keeshin arrangement there was no Sunday pickup?

A. I don't believe there is a Sunday pickup on the Keeshin service.

Q. And you don't know whether there was one under the Parmelee?

A. I do not.

Q. Do you recall that there is an arrangement of a

difference in rate in different zones on baggage delivery charges?

1491 A. Yes, I do. I believe there is a tariff filed on that, and I think that should speak for itself.

By Mr. McConnell: All right, I think it speaks for itself, and I will ask that this be marked for identification as Plaintiff's Exhibit 108, and this document as Plaintiff's Exhibit 109 for identification.

(Thereupon the said documents were marked Plaintiff's Exhibits 108 and 109 for identification.)

By Mr. McConnell:

Q. I show you a document which is marked for identification Plaintiff's Exhibit 108, which purports to be a trunk line central passenger regulation governing the through checking of baggage to stations on lines of the issuing and participating carriers for delivery to addresses at places named herein, and I ask you if you can tell us whether that is a correct statement of the tariff that you said would speak for itself?

By Mr. Thompson: We object to this as improper cross examination, No. 1; and, secondly, as having nothing

1492 to do with the contract arrangements between the contracting parties involved here.

By Mr. McConnell: This witness has been examined at length on whether or not the Keeshin service was better than the Parmelee service.

By the Court: Objection sustained.

By Mr. Thompson: That had to do only with the station-to-station transfer.

By the Court: Objection sustained.

1493 By Mr. McConnell:

Q. Perhaps I can get at it this way: Were these scheduled rates filed pursuant to the service to be performed under the contract with Keeshin?

A. I can't consider that the terms of the contract had anything to do with the rates that were filed either at the time of the initial contract or later.

Q. Well, I call your attention to this provision in the contract which is now in evidence. "Transfer—" That is Keeshin's company, isn't it?

A. That is right.

Q. (Reading):

> " . . . agrees to furnish and perform the following services hereinafter collectively referred to as baggage pickup and delivery service within the terminal area,"

and then there are listed a number of services which they are going to perform.

Now, are the services which are included in this contract the services for which this schedule is filed on rates?

A. It is.

By Mr. McConnell: I submit that it is proper, 1494 your Honor. It comes right within the agreement.

This is the service. The contract is silent on it and the price.

By the Court: What is the question?

By Mr. McConnell: I have forgotten what the phraseology of the last question was.

Read the question, please.

(Whereupon the question was read as follows:

> "I show you a document which is marked for identification Plaintiff's Exhibit 108, which purports to be a trunk line central passenger regulation governing the through checking of baggage to stations on lines of the issuing and participating carriers for delivery to address at places named herein, and ask you if you can tell us whether that is a correct state-

ment of the tariff that you said would speak for itself.")

By Mr. McConnell: I will withdraw the question.

By Mr. McConnell:

Q. Does that tariff schedule show the prices
1495 which were charged by Keeshin's company for the services which I have read to you or called your attention to in the contract?

By Mr. Thompson: If the Court please, this has nothing to do with station-to-station transfer. It is a wholly separate and distinct a service, and a service which is performed by private contract between the customer who wants dray service or transfer service and the trucking company. It has nothing to do with the station-to-station transfer.

By Mr. McConnell: It has to do with the subject matter of this contract.

By the Court: I will let the witness answer that question.

By the Witness: Will you please read the question again?

(Whereupon the question was read as above recorded.)

By the Witness:

A. The reason for it—this is going to be a lengthy answer.

By Mr. McConnell:

Q. It doesn't need to be lengthy.

1496 By Mr. McConnell: Read the question again. You can answer that very quickly.

By the Witness:

A. Not without an explanation of what is in the contract.

By Mr. McConnell:

Q. You answer the question, and then go ahead and make any explanation you want, but I would like an answer to my question, please.

A. I don't believe I can answer it in the way in which it was asked.

Q. All right. You can't answer it, is that right?

A. I don't believe I can answer it in the way it was asked.

By Mr. McConnell: I ask that this document be marked Plaintiff's Exhibit 110 for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 110 for identification.)

By Mr. McConnell:

Q. I show you a document which has been marked for identification Plaintiff's Exhibit 110, which purports to be rules, regulations and rates governing the through
1497 checking of baggage issued by E. B. Padrick, agent, and ask you if you promulgated that, wrote it up and sent it out and put it into effect?

A. That was issued by my organization, yes, over my name.

1498 Q. Now what does that purport to be?

By Mr. Thompson: Just a moment, please. We object to the witness describing the document. It is marked, and it will speak for itself, if it is ever received in evidence.

By Mr. McConnell: He prepared it. I am asking what it purports to be. I am simply identifying it for the record, that is all.

By Mr. Thompson: It speaks for itself.

By the Court: He said it is his signature and he sent it around.

By Mr. McConnell: I am trying to see if it has anything to do with this matter before I offer it in evidence. He prepared it.

By the Court: He may answer if it had anything to do with this local situation.

By the Witness:

A. This is a tariff of rules and regulations and rates governing through checking of baggage from the addresses and placed named therein for delivery to stations on lines of the issuing and participating carriers 1499 shown therein.

Q. Were those rates that were put into effect under this Keeshin contract?

By Mr. Thompson: If the Court please, the transfer company, so far as anything indicated so far hasn't anything to do with it, and it has nothing to do with station-to-station transfer, which is all this contract covers. We object to it as improper cross examination and it is immaterial.

By the Court: What the witness says it covers, whether he does it now or on redirect, I can't anticipate it. I don't know anything about it. He may answer.

By the Witness: What was the question?

By Mr. McConnell: Read the question, please.

(Thereupon the record was read as above recorded.)

By the Witness:

A. The tariff shows it became effective October 20, 1955.

By Mr. McConnell:

1500 Q. And that was after the Keeshin contract went into effect, is it not?

A. That is true.

Q. Do you know whether those rates were different than the rates that were charged und the Parmelee contract?

By Mr. Thompson: If the Court please, that would prove nothing. Groceries are higher now than they were

in 1955. It proves nothing with respect to this litigation; has nothing to do with it. We object to the question.

By the Court: I will let him answer.

By the Witness:

A. Without having the comparisons in front of me at the present time, I would not be able to answer the question.

By Mr. McConnell:

Q. Now you had some discussion, I think you testified about in your direct, about the loading and unloading of baggage by the railroads under the Keeshin proposal?

A. No, I don't recall that I testified to the fact of the loading and unloading of baggage by the railroads.

1501 Q. Wasn't there a proposal made at one time that the railroads should load and unload baggage?

A. There was an alternate proposal made at one time with respect to that situation.

Q. And that was made by whom?

A. Mr. Keeshin.

Q. And the railroads objected to it?

A. The railroads did not accept the alternate proposal.

I think I must state in answer to that, as I did earlier today, however, that we did say to Mr. Keeshin that if he could negotiate with any of the stations that he was permitted to do so.

Q. It never went into effect, is that right?

A. No; I believe I testified this morning that in connection with that, that there were two stations, the arrangement for the handling of the baggage there by the station employees which did go into effect at the North Western Station and at the LaSalle Street Station for an amount that was paid by Mr. Keeshin.

Q. That was something that was negotiated by Mr. Keeshin after the acceptance by the committee of his proposal, was it not?

A. We understood at the time of the proposal
1502 that he was ready to handle the loading and unloading of baggage from the platform at the tailgate of his vehicles and onto the platforms at the tailgate of his vehicles at all stations.

Q. And that was changed, was it not, by at least two stations by some later negotiations?

A. By individual negotiations with the stations.

Q. Do you recall that Parmelee had a sorting place of their own for baggage?

A. I believe they did.

Q. Where was it, do you recall?

A. No, I do not recall specifically.

Q. Did Keeshin have any such place to sort baggage?

A. To my recollection he did.

Q. Where was it?

A. At the La Salle Street Station.

Q. He got that from the station?

A. I understand he did and paid rental on it.

By Mr. McConnell: Let me have those pictures.

Mark these photographs as Plaintiff's Exhibits 111, 112, 113, 114, 115 and 116, for identification.

1503 (Thereupon said photographs were marked, respectively, as Plaintiff's Exhibits Nos. 111, 112, 113, 114, 115 and 116 for identification.)

By Mr. McConnell:

Q. I show you pictures that are marked for identification as Plaintiff's Exhibits 111 to 116, inclusive, and ask you if you can identify these pictures as the equipment operated by Keeshin at least so far as passengers are concerned?

By Mr. Thompson: May I look at them?

By Mr. McConnell: You can look at them all you want to.

By Mr. Thompson: Good.

The question is, does he identify them, I guess.

By Mr. McConnell: Read the question.

(Whereupon the record was read as above recorded.)

1504 By Mr. Thompson: If the Court please, we object to the form of the question, as identifying these as pictures of the equipment operated by Keeshin, without fixing any period of time and without fixing any limitation to the question as to whether there was other equipment.

The equipment would include all the passenger equipment, I would assume, which is incorporated in the question, and secondly, there is no indication of what date he is talking about when these pictures were taken.

Of course, there has been no foundation laid to these pictures, but we are not to that point yet.

By the Court: The objections are well taken. Sustained.

By Mr. McConnell: Well, I am just asking if he can identify them as pictures of the equipment.

By Mr. McConnell:

Q. Can you identify them as pictures of any equipment that you have seen Keeshin using?

1505 A. These two pictures would seem to be to me taken at the same time of the same vehicle with the same passengers in them, and this is, to my knowledge, a type, one type of equipment that was provided by Keeshin. It is the station wagon type of equipment that we have talked about.

By Mr. Thompson: Will the Witness please identify the numbers of the documents to which he is referring?

By the Witness: This indicates it is Plaintiff's Exhibit No. 114, the one I have in my right hand, and this one

that I have in my left hand now is identified as Plaintiff's Exhibit No. 111.

By Mr. McConnell:

Q. All right. Now, can you identify those pictures, the numbers of which you referred to, as a station wagon that you talked about this morning in your direct examination?

A. It is the station wagon type of equipment that was used by Keeshin.

Q. All right.

A. It has no provision for loading of baggage on top, and from the pictures it would appear that the
1506 loading is to and from the rear, as I indicated.

Q. All right. Now, of those pictures can you pick out any pictures of the Volkswagens that you talked about this morning as being operated by Mr. Keeshin?

A. There are two pictures here of Volkswagens that appear to be taken at the same time, because it would appear that the same passengers are in the same seats, and the driver is in the same position in both of the pictures. The one I have in my right hand is Plaintiff's Exhibit No. 113, and the one I have in my left hand is Plaintiff's Exhibit No. 116, and they are, to my knowledge, the same type of Volkswagen that was used in the temporary operation that I spoke of in my testimony this morning, and again, these pictures do not show any provision for the handling of baggage on top.

Q. Well, was there any provision for the handling of baggage on top?

A. There was not.

Q. How long were these Volkswagens used?

A. My recollection is that they were used from late in October or early November, and the last one was out of usage, as I recall it, by the first of the year.

1507 Q. The Parmelee people used a seven-passenger limousine, didn't they?

1508 A. I believe that I testified before, and I do consider a difference between a 7-passenger limousine and a taxi cab, sir, and I would have to say that this was a taxi cab type of car that was operated by Parmelee; and I would not consider it to be a limousine.

Q. Well, where was its baggage stored?

A. To the extent of availability, it was stored in the back, in the trunk compartment, as we who drive an automobile would testify to, I believe, or at least I have to testify to that, and if there was an overage in connection with the baggage it was usually handled in the front seat alongside the driver.

I am talking about hand baggage now and not about checked baggage.

Q. I know what you are talking about is hand baggage, that you wouldn't have to open up and expose the interior of the automobile, whatever you want to call it, a taxi cab, a reformed taxi cab or a large taxi cab, that it didn't have to be opened up and exposed to the elements to put the baggage in it, did it?

A. It did not.

Q. And it did hold seven people?

A. Yes, counting two people on the driver's side, on the driver's seat.

1509 Q. And that was the type of equipment that had been used prior to the time of your statements of your committee people in the spring of 1955, that that was satisfactory, that the service was satisfactory?

A. The indications have been to that extent by some.

Q. Of your committee?

A. Some of the committee.

Q. Well, let me ask you this: You didn't indicate, you yourself indicate any dissatisfaction with Parmelee equipment to any railroad or to anybody at any time, did you?

A. I, personally?

Q. Yes.

A. I did not.

By the Court: This might be a nice time to say good-night to you folks, and have a pleasant evening and please don't discuss this case with anyone. I will see you tomorrow morning at 10:00 o'clock.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:15, please.

1510 (Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Thursday, May 5, 1960, at the hour of 10:15 o'clock a.m.)

1511 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Thursday, May 5, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh M. Cross;

1512 Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1513 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.
By the Court: Bring out the jury.

(Whereupon the following further proceedings were had herein in open court, in the presence and hearing of the jury:)

EARL B. PADRICK, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:
By the Court: All right, let's go to work.

Cross Examination (Resumed)

By Mr. McConnell: I will ask that these documents be marked Plaintiff's Exhibits 117 and 118, respectively, for identification.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 117 and 118 for identification.)

1514 By Mr. McConnell:

Q. Mr. Padrick, I show you a document which has been marked for identification Plaintiff's Exhibit 117, which purports to be a letter on the letterhead of the Erie

Railroad Company, under date of May 22, 1956, from Mr. R. E. Towns, assistant general passenger agent, addressed to you as chairman of the Western Passenger Association.

I ask you whether or not you received that letter through the mails at or about the date that it bears.

A. Yes, I received that letter.

Q. I show you a document which is marked for identification Plaintiff's Exhibit 118, which purports to be a notice of some kind under date of February 20, 1956, typed in your name and Mr. A. J. Winkler, and ask you whether or not you promulgated that or sent it out to the parties to whom it is addressed.

A. I did.

Q. Now going ba[illegible] to Plaintiff's Exhibit 117, who is Mr. R. E. Towns?

A. General passenger agent of the Erie Railroad, Chicago.

Q. Can you identify his signature on this?

1515 A. I cannot identify his signature, no.

Q. Did you have a chance to read that letter when I showed it to you or did you look at it?

A. I scanned through it. I didn't read it thoroughly.

Q. I call your attention to the letter marked A-225. Do you recall that that letter was produced out of your files, the Association files?

A. Yes, those were the numbers that were used out of our files, and we received this letter on May 23. This is our dater stamp. It was received in our office.

1516 Q. I call your attention to the next to the last paragraph of that letter, and ask you to read it to yourself, not to anybody else.

A. Yes, this has to do with the pickup and delivery service.

By Mr. Thompson: Just a moment. He hasn't asked you any question.

By the Witness: Pardon me.

By Mr. Thompson: He has just called your attention to a paragraph of the letter.

By Mr. McConnell: Now I will ask the question.

By Mr. McConnell:

Q. Does that refresh your recollection that one of the railroads, at least, of your association was complaining about the service rendered by Keeshin's company.

A. Pickup and delivery service—

By Mr. Thompson: Wait a minute.

By Mr. McConnell: I don't know what that gesture was about. I asked a question.

By Mr. Thompson: May I have a chance to take
1517 a look at this document before you proceed further with cross examination.

By the Court: You may, Judge Thompson.

By Mr. Thompson: We object to any cross examination on this document. It has nothing to do with the interstation transfer service which is the subject matter of this litigation. The subject matter of the document is immaterial to any issue in this case, and certainly to the issue we are trying.

By the Court: If the witness will so state, I will sustain the objection. But he has to state what it is so you can question him whether it is or is not part of the contract.

By Mr. McConnell: I asked him a question whether it refreshes his recollection. He can answer that yes or no.

By the Court: Yes, he may answer.

By the Witness:

A. Yes, it refreshes my recollection.

By Mr. McConnell:

Q. All right. I will ask you this: The Erie Railroad was a member of your association, wasn't it?

A. It was one of the Chicago Terminal Lines.

1518 Q. Yes, that was one that you were acting as chairman for?

A. I did act as chairman for these meetings, yes.

1519 Q. Was the Erie Railroad complaining about the way the Keeshin company was picking up baggage in the transfer service?

By Mr. Thompson: We object to this inquiry as having nothing to do with interstation transfer. This is a matter apart from that.

By the Court: If it pertains to some subject matter under the contract, he may answer. If it doesn't, he may state so.

By the Witness:

A. This has to do with the pickup and delivery service from homes to trains in the City of Chicago.

By Mr. McConnell:

Q. That was covered by your contract, wasn't it?

A. I don't consider that it was.

Q. Wasn't that service that was rendered by Parmelee when it had this transfer business?

A. Parmelee did render this service but separate and apart from the railroad transfer service.

Q. Well, it was part of the service they were rendering for the railroads and for this segment of commerce, wasn't it?

A. They were not the only ones rendering this service.

1520 Q. I didn't ask you that.

By Mr. McConnell: Read the question.

(Thereupon the record was read as above recorded.)

By the Witness:

A. I consider they were rendering that particular service for themselves.

By Mr. McConnell:

Q. I call your attention to this statement in Mr. Towns' letter to you.

By Mr. Thompson: We object to reading any part of this document.

By the Court: Objection sustained.

By Mr. McConnell: I offer the document in evidence.

By Mr. Thompson: We object to the receipt of the document in evidence as being immaterial to any issue in this case, and improper to be offered on cross examination.

By the Court: Objection sustained, for other reasons. No proper foundation is laid, and he doesn't know the signature. It was in his file, and it pertains to somebody else, what somebody else is thinking or saying.

1521 By Mr. McConnell: He is telling us whether or not there were complaints.

By the Court: He can answer the question whether the letter refreshes his recollection, but what the document says is inadmissible and the objection is sustained.

By Mr. McConnell:

Q. Does this letter refresh your recollection that the Erie Railroad was complaining that the services which were rendered by Railroad Transfer didn't equal the service rendered by Parmelee?

By Mr. Thompson: We object to that.

By the Witness:

A. I cannot say that.

By Mr. McConnell:

Q. Well, will you look at the letter again?

A. The letter doesn't say that.

1522 Q. I call your attention to the next to the last paragraph of the letter.

A. Under the circumstances I would like to call your attention to the question that you asked me. You said

"services" and I maintain that this letter pertains only to one type of service that was rendered by Railroad Transfer, and that is the pickup and delivery service and has nothing to do with the station-to-station transfer service.

Q. Well, let me give you a new question, and I will accept your modification. Does that refresh your recollection that a service which was being performed by Parmelee according to one of your constituent railroads wasn't being performed by Keeshin's company?

By Mr. Thompson: We object to that as improper cross examination.

By the Court: The objection is sustained. He has answered it several times.

By Mr. McConnell: I thought, your Honor, that the narrow issue we were trying here was whether or not—

By the Court: I think he has answered it. Have you answered it, Mr. Witness?

By the Witness: I think I have, sir.

1523 By Mr. McConnell: I have no further questions of this witness, except I want to make an offer of proof on this outside the presence of the jury.

By the Court: Any redirect, Judge?

By Mr. Thompson: Yes, but I don't know whether they have finished.

By Mr. McConnell: I say I have an offer of proof to make, your Honor, outside the presence of the jury on these documents.

By the Court: Very well. Do you want to proceed, Judge Thompson, before he makes the offer of proof or after?

By Mr. Thompson: Yes.

By the Court: Now?

By Mr. Thompson: Yes.

By the Court: All right.

Redirect Examination by Mr. Thompson.

Q. Mr. Padrick, on this subject which has just been the subject of inquiry, did the railroads have anything to do with the schedule of prices that the Parmelee
1524 Transportation Company charged folks for picking up and delivering baggage?

A. No, sir.

Q. Did they have anything to do with the prices that the Railroad Transfer Service Company charges?

A. No, sir.

Q. Have these prices varied from time to time in accordance with costs and other economic matters?

A. Yes, they have varied from time to time.

Q. No different since the Railroad Transfer has taken over than when Parmelee Transportation Company was handling it?

By Mr. McConnell: I object to that.

By the Court: Yes, objection sustained.

By Mr. Thompson:

Q. Getting to this subject of the military charge, you said that back during the war there was a special rate paid by the Parmelee Transportation Company for transferring furloughees who were passing through Chicago on a through ticket. Was there also a special charge or special rate by the railroads for the through tickets for these furloughees?

A. A specially reduced rate, sir.

Q. So that the transfer coupon was reduced in relation to the whole ticket charge?

1525 A. It was reduced in connection with that.

Q. As to the military man, that is those whose transportation was being paid by the Government, was there a special fare for that?

A. A ten-percent reduction to the Government by the railroads.

Q. During that period prior to 1948, that is, during the war period from 1942 to 1948, the transfer charge for passengers was 85 cents, wasn't it?

A. That is correct.

1526 Q. Even prior to 1942 it was 75 cents?

A. That is right.

Q. Was the coupon charge that Parmelee was collecting during this period for transferring the passengers who were military men on these military tickets the same as it was for other passengers?

A. It was.

Q. And is the Railroad Transfer Service Company now transferring military personnel for 85 cents?

A. Not military personnel as such. They are furlough personnel for 85 cents.

Q. Getting to this matter of whether a profit and loss statement was furnished as requested by the Parmelee Transportation people, I think you said the representation was made that the reason it was not forthcoming was because it was not available from the way they kept their consolidated accounts of the various companies.

Did Parmelee nevertheless represent to the railroads that it was losing money on this whole transportation situation?

A. It did.

Q. Was it for that reason that you asked for the profit and loss statement?

1527 A. It was.

Q. Getting to another subject which was covered in cross examination, and that is this purpose of the transfer service here, among other things, and the unique situation we face in Chicago, if a passenger traveling from New York to San Francisco on a through ticket chooses a route across the country, does his ticket cost him the same whether he chooses the route out of New York on

the New York Central or the Erie or the Pennsylvania and out of Chicago on to San Francisco on the Burlington, the Union Pacific or the Santa Fe?

A. On the New York Central and the Pennsylvania, the fare is equalized. On the routes of the Erie and the D&LW, they have been considered routes that are differential routes because of a longer time, and they have always had a differential, but the rates on those two lines are also equalized.

1528 Q. Well, all right, then, to get out of the special situation. The fare through Chicago from New York to San Francisco on the Class I railroads is the same, whatever route the passenger chooses?

A. That is right.

Q. Who chooses the route?

A. The passenger.

Q. And incorporated in all those through tickets is this transfer coupon?

A. It is.

Q. So that if the passenger coming through Chicago to San Francisco on the Pennsylvania goes out on the Burlington, he arrives and departs from the Union Station?

A. That is correct.

Q. And if he comes in on the New York Central and goes out on the Santa Fe, he has to transfer from the LaSalle Street station to the Dearborn station?

A. That is correct.

Q. But the passenger gets the benefit of that coupon, and therefore his fare is the same?

A. The passenger gets the benefit of the coupon free of charge.

Q. What about the interval between the arrival
1529 of some of the trains and the departure of outgoing trains where this transfer must be made. Are some of them close?

A. Some are close; some are very close.

Q. What about the railroad's attitude toward providing this service for its passengers, this transfer service, with respect to whether this special service is needed for that purpose?

A. It has always been the thought of the carriers, as far as I know, that the transfer service was necessary to provide for special or short connections and any connections as far as that part of it is concerned.

Q. Is there any other competition, transportation competition with the railroads, other than among themselves?

A. There certainly is.

Q. And what is that?

A. Airlines, bus lines.

Q. Now there was some suggestion made with respect to the handling of corpses. Do you know whether there has been any change in the service of handling a corpse between the service formerly rendered prior to October 1, 1945, and that currently rendered?

1530 A. Yes, there has been a change.

Q. What is the change?

A. A couple of specially built wagons, station wagons were built—I won't say were built—there were at least two station wagons modified for the purpose of handling corpses exclusively.

Q. And has that improved the service of dispatching—

By Mr. McConnell: I think that is a jury question, whether it has or hasn't.

By the Court: He may answer.

By the Witness:

A. I think it is a better transfer. It leaves a better relationship with the public than the handling of corpses in trucks.

By Mr. Thompson:

Q. Is that important to the relations between the public and its passengers?

A. The railroads have thought so.

By Mr. McConnell: I have to strike out what the railroads thought.

By the Witness: I think so.

By Mr. Thompson: The railroads are the ones that are buying the service, your Honor.

By the Court: Objection sustained as to what
1531 the railroads thought. His answer may stand as to what he thinks.

By Mr. Thompson:

Q. Do you know, Mr. Padrick, whether it is a fact that prior to October 1, 1955, there were others than the Parmelee Transportation Company providing private pickup and delivery service?

A. Any drayage firm can provide, any drayage firm in the district could provide pickup and delivery service to the stations.

Q. Were they, as a matter of fact, do you know?

A. Yes.

Q. And is it true today that that is still open to anybody that wants to go into the business?

A. It is.

Q. And do other drayage people as a matter of fact perform pickup and delivery service for customers to your knowledge?

A. Yes, and I am quite sure for a long period of time Parmelee provided that type of service, particularly for the boys and girls' camps.

Q. That was subsequent, you mean, to October 1, 1955, after the Keeshin group took over?

A. That is right.

1532 By Mr. Thompson: I think that is all.

My associates think there is a question not yet answered.

By Mr. Thompson:

Q. Did this furloughee rate of 85 cents for the transferring go into effect prior to the changeover of this service?

A. It did.

Q. So that Parmelee Transportation Company and the Railroad Transfer Service, Inc., are charging the same as far as this transfer rate is concerned of 85 cents?

A. Exactly the same.

By Mr. Thompson: That is all.

1533 *Recross Examination by Mr. McConnell.*

Q. You draw a distinction between furloughees and regular military personnel. What is the charge to them for coupons?

A. Regular miltary personnel?

Q. Yes, not furloughees.

A. The regular rate, same as for the—

Q. As for a civilian?

A. A civilian, yes, sir.

Q. Now this profit and loss statement you were asked about, you never had a contract with Parmelee company which compelled them to furnish you a profit and loss statement or give you access to their books and records, did you?

A. No, sir.

By Mr. McConnell: All right. I have no further questions.

By Mr. Thompson: That is all.

(Witness excused.)

By Mr. Thompson: If the Court please, we desire to read a small part, a score or so of questions and answers from the testimony taken before trial of Morris Markin,

who is or has been at various times an officer and
1534 director of plaintiff, and recall him under the rule as a witness adverse to the defendants.

I shall read only the questions that I think—

By Mr. McConnell: Will you tell us where you are reading?

By Mr. Thompson: (Continuing) —that we think are pertinent to the issues.

By the Court: I didn't hear you, Mr. McConnell.

By Mr. McConnell: I want to find out where he is reading so we can follow along.

By the Court: Yes.

By Mr. Thompson: I was going to call the pages.

By Mr. Freeman: We don't have a copy.

By Mr. Tone: I have a copy.

By Mr. Thompson: Let him have yours. You don't need to watch me.

The examination—

By Mr. Freeman: What page?

By Mr. Thompson: Page 1.

MORRIS MARKIN, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

1535 By Mr. Thompson: (Reading)

"Q. Will you state your name, please?

A. Morris Markin.

Q. What is your address?

A. 5333 North Westnege, Kalamazoo, Michigan.

Q. Where is your principal business address, Mr. Markin?

A. Kalamazoo, Michigan.

Q. And the street?

A. North Pitcher Street.

Q. And do you have a Chicago business address?

A. Yes.

Q. What is that?

A. I stay at the Blackstone Hotel.

Q. Is that what you call your Chicago business address?

A. No, I am sorry, Mr. Thompson. The business address would be--actually, I attend to many businesses here in Chicago, so I could be at the Yellow Cab or I would be at DesPlaines Street, Parmelee.

Q. Well, all right. The business address of the plaintiff, Parmelee Transportation Company, Inc., is what?

A. 300 North DesPlaines."

1536 By Mr. Thompson: Then I pass to page 9.

By Mr. Thompson: (Reading)

"Q. Now who were the principal stockholders in the newly organized Parmelee Transportation Company, Inc., plaintiff in this case, when it was organized in 1929?

A. Well, that was organized by a syndicate of bankers, and the stockholders were numerous. It was underwritten by bankers in New York?

By Mr. Thompson: Skipping some questions.

By Mr. Thompson: (Reading)

"Q. What was your business at the time of this organization in 1929?

A. I was interested in steel, as in the building of cabs, manufacturing automobiles, put in that way.

Q. And what was the name of the company?

A. At that time it was Checker Cab Manufacturing Corporation. The name has been changed today to Checker Motor Corporation."

1537 By Mr. Thompson: At Page 13:

"Q. Well, Parmelee Transportation Company, Inc., the plaintiff here, is a company with a number of subsidiaries?

A. That is right.

Q. But who owns Parmelee?

A. Parmelee is owned by Checker. I mean, the majority is owned by Checker Cab Manufacturing Corporation.

Q. And who owns the Checker Manufacturing Corporation?

A. Stockholders and myself.

Q. Well, what is the Checker Taxi Company, Inc.?

A. Checker Taxi Company, Inc., is an operating company in the City of Chicago.

Q. Does it actually operate the Checker taxicabs?

A. It does.

Q. And what part of that company do you own?"

By Mr. Thompson: Skipping the interruption:

"A. I believe I own most of it with the exception of a very small minority.

Q. Well, now, does Checker Taxi Company, Inc., own a part of this one we have been talking about, Check-1538 er Cab Manufacturing Company of Kalamazoo?

A. It does."

By Mr. Thompson: Then next Page 15:

By Mr. Thompson: (Reading)

"Q. Now then, we are coming to the plaintiff in this case, down this ladder. You say the plaintiff, Parmelee Transportation Company, Inc., is owned at least in part by Checker Cab Manufacturing Company of Kalamazoo, is that right?"

By Mr. Thompson: Then the answer comes below there:

By Mr. Thompson: (Reading)

"A. Today Checker Motors Corporation owns about 65 or 68 percent of the Parmelee stock."

By Mr. Thompson: Then at Page 16, bottom of the page:

By Mr. Thompson: (Reading)

"Q. Now, Parmelee Transportation Company, as you said a moment ago, owns some companies, among them Chicago Yellow Cab Company, Inc., doesn't it?

A. They have holdings in them. They don't own Chicago Yellow Cab. They have a percentage of—

Q. Do you know how large a percentage? Does Parmelee own a controlling interest in Yellow Cab or not,
1539 Chicago Yellow, I mean.

A. I think around 47 or 48 percent, something like that,"

By Mr. Thompson: Then the next Page 18:

By Mr. Thompson: (Reading)

"Q. Now Chicago Yellow Cab Company is a holding company?

A. Yes.

Q. And it doesn't operate the cabs in Chicago?

A. It does not.

Q. What company operates the Yellow cabs in Chicago?

A. I would say the Yellow Cab Company of Chicago."

By Mr. Thompson: The next page:

By Mr. Thompson: (Reading)

"Q. Do you have an office in Checker Taxi Company, Inc., at Chicago?

A. I used to have it, but not now any more.

Q. And do you have an office in Checker Motors Corporation, Kalamazoo?

A. I do.

Q. What is your present position there?

A. I am president of the company.

Q. And do you have an office in Parmelee Transportation Company, Inc.?

1540 A. Well, I use the offices in either one of these companies. Let us put it that way. I don't have a special office there.

Q. What is the official position?

A. In Parmelee?

Q. Yes.

A. I am president of the company. I am sorry, I am chairman of the board. I was a little bit confused."

1541 By Mr. Thompson: Page 21.

By Mr. Thompson: (Reading)

"Q. Now, Parmelee also owns Continental Air Transport Company in Chicago, doesn't it?

A. It does.

Q. And the National Transportation Company of New York, that is also a subsidiary of Parmelee, isn't it?

A. That is correct.

Q. Does that company operate only in New York?

A. Only in New York.

Q. Just taxis in New York?

A. Yes, sir."

By Mr. Thompson: The next page, at the bottom of the page.

By Mr. Thompson: (Reading)

"Q. Now, the Yellow Taxi Company of Minneapolis is apparently another subsidiary of Parmelee Transportation Company, Inc.?

A. That is correct."

By Mr. Thompson: And then further down:

By Mr. Thompson: (Reading)

"Q. And the Yellow Cab Company of Pittsburgh, that actually operates cabs in Pittsburgh, I assume?

A. That is right.

1542 Q. Now the Airline Transportation Company of Pittsburgh, that is another subsidiary of Parmelee Transportation, apparently?

A. That is right."

By Mr. Thompson: At the bottom of page 24:

By Mr. Thompson: (Reading)

"Q. Are you on the board of directors of Parmelee Transportation Company, Inc.?

A. I am."

By Mr. Thompson: Page 30, the bottom of the page.

By Mr. Thompson: (Reading)

"Q. Now, this Transportation Maintenance Corporation of Chicago, you are familiar with that company, I suppose?

A. I am familiar with most of the operations here."

By Mr. Thompson: The next page.

By Mr. Thompson: (Reading)

"Q. Aren't you chairman of that company, too?

A. No, the Chicago Maintenance Corporation is a company established for the two cab operations, a joint company."

By Mr. Freeman: Read the rest of that answer.

1543 By Mr. Thompson: The answer down further—

By Mr. Thompson: (Reading)

"A. . . . . the stock belongs to Yellow and Checker Taxi."

By Mr. McConnell: You didn't read the answer on page 31.

By Mr. Thompson: If you want me to read all that chit chat, I will. It won't take but a minute.

By Mr. McConnell: Most of it you have read so far is chit chat, and a little more won't hurt.

By Mr. Thompson: (Reading)

"Q. Aren't you chairman of that company, too?

A. No, the Chicago Maintenance Corporation is the company established for the two cab operations, a joint company. It is a non-profit company.

Q. Non-profit?

A. That is right.

Q. A charitable organization?

A. If you please, now let me put it my way, not in a legal way.

Q. All right.

A. The stock belongs to Yellow and Checker Taxi."

1544 By Mr. Thompson: Does that suit you? Page 34.

By Mr. Thompson: (Reading)

"Q. General Fire and Casualty Company, who owns that?

A. That is owned by Parmelee, Yellow Cab Company and Checker Taxi.

Q. Are you an officer of that?

A. I am chairman of the board of that."

By Mr. Thompson: The next page.

By Mr. Thompson: (Reading)

"Q. Well, does General Fire and Casualty furnish the insurance for the Parmelee Transportation Company's subsidiaries that I have mentioned?

A. It does in casualty."

By Mr. Thompson: Page 37:

By Mr. McConnell: Why don't you read the answers? I don't think they amount to anything, but if you are going to read an answer, read an answer. You only read one sentence in the answer.

By Mr. Thompson: You mean that there is some part you want that I have not read?

By Mr. McConnell: I don't care what you read, except read it all when you read an answer. When you read

1545 an answer, read an answer.

By Mr. Thompson: (Reading)

"A. It does in casualty."

By Mr. Thompson: That is the total answer.

By Mr. McConnell: All right.

By Mr. Thompson: Page 37:
By Mr. Thompson: (Reading)

"Q. This Checker Motors Corporation, formerly the Checker Cab Manufacturing Company of Kalamazoo, makes special purpose motor vehicles, doesn't it?

A. It does."

By Mr. Thompson: At the bottom of Page 38:
By Mr. Thompson: (Reading)

"Q. But over the period of the past ten years, let us say, did Checker Motors supply Parmelee subsidiaries with its cabs?

A. It did.

Q. And did Checker Motors Corporation or its predecessor in name supply the limousines which Parmelee used in its interstation transfer business here in Chicago?

A. You are talking about the large limousines?

1546 Q. Yes.

A. It did.

Q. You supplied all the passenger vehicles that were used in that local transfer business?

A. That is right."

By Mr. Thompson: Page 51 at the bottom of the page:
By Mr. Thompson: (Reading)

"Q. Benzoline Motor Fuel Company of Chicago, that is owned one hundred percent by Chicago Yellow Cab Company, Incorporated, isn't it?

A. That is right.

Q. Does that company sell motor fuels to Parmelee Transportation Company?

A. It does."

By Mr. Thompson: A little further down on Page 52:
By Mr. Thompson: (Reading)

"Q. How long has Parmelee owned Yellow Cab?

A. Since 1929."

(Witness excused.)

By Mr. Thompson: That is all we will read from that deposition.

By Mr. McConnell: If the Court please, under the
1547 rules the editing of a deposition is all right, but we have the right also to read parts which are connected with what has been read.

By the Court: I think you have, relevant parts.

By Mr. McConnell: And I think we will reserve that right to our side of the case.

By the Court: You have a right to do it.

By Mr. Thompson: Mr. Whittington.

1548 JOHN F. WHITTINGTON, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please?

A. John F. Whittington.

Q. And your residence address?

A. Baltimore, Maryland.

Q. And your business address?

A. Baltimore, Maryland.

Q. With what company are you connected?

A. General passenger traffic manager of the Baltimore and Ohio Railroad.

Q. How long have you been employed by the Baltimore and Ohio Railroad?

A. 48 years.

Q. How long have you been stationed in Philadelphia, or rather, Baltimore?

A. 14 years, going on 15 years.

Q. Were you formerly stationed in Chicago?

A. In Chicago from 1941 to 1946 as passenger traffic manager.

1549 Q. You are familiar with the interstation transfer service that has been in vogue in Chicago for a number of years?

A. I am.

Q. During your residence in Chicago, your business location in Chicago, did you have some over-all connection with this interstation transfer service?

A. Being passenger traffic manager in Chicago, it was my responsibility to look after the transfer of passengers at the Grand Central Station.

Q. Since you have gone to Baltimore what is your connection with the passenger service here in Chicago?

A. I have complete jurisdiction over it through Mr. Coleman, our passenger traffic manager here in Chicago.

Q. Who is Mr. Coleman's assistant?

A. Mr. Nelson.

Q. Stanley Nelson?

A. That is correct.

Q. How frequently do you come to Chicago in the course of your duties, Mr. Whittington?

A. At least once a month, possibly twice a month and occasionally three times a month.

1550 Q. Did you have some general knowledge, at least over-all knowledge, of the conditions existing in Chicaog with respect to this interstation transfer service, let us say at the beginning of 1954?

A. I did, yes, sir.

Q. Did you know of the action which resulted in the appointment of a committee of the Chicago Terminal Lines?

A. I did, yes, sir.

Q. Did you know that the Baltimore and Ohio was selected as the representative of the Grand Central Station on that committee?

A. Yes, sir.

Q. Did you follow to a degree the negotiations that went on in 1954 and 1955?

A. I became very much interested in 1954 after we received a proposal from the Keeshin company that they were interested in performing the service. Up until that time we had not received any definite proposals from anyone.

Q. What was the situation, if you know, that prompted the action of appointing this committee in the early part of 1954?

A. Well, I would have to go back to the time I was
1551 located here. It was the constant increases that the Parmelee people were asking the railroads to provide, and when I was located here I endeavored, through every source I knew, including many times talking to Mr. Markin direct, that he give us proof that he was entitled to increases that he wanted.

Mr. Markin said it was impossible to do it and he wouldn't do it, and at no time could I ever persuade him or anyone.

1552 His former president, Mr. Landman, former president now deceased, a personal friend of mine, former passenger traffic manager of the New York Central—I interceded with him to try to get a statement from Parmelee to show whether or not he was making money or losing money on the operation in Chicago. I never could succeed.

Q. In 1954 do you recall whether there was pending at the beginnning of the year a request for an increase?

A. I think the rate went, was going to $1.22, but at that time it was either $1.20 or $1.22, and I don't recall the exact amount, but I did receive some statement indicating that Parmelee intended, if traffic went down, that the rate would possibly go to a rate of $1.50 per passenger.

I think it was predicated upon the number of passengers that were transferred—

By Mr. McConnell: I object to that. If there is a statement, that would be the best evidence.

By Mr. Thompson:

Q. I direct your attention, Mr. Whittington, to a document in evidence as Plaintiff's Exhibit No. 5.

1553 By Mr. Thompson: Is that Plaintiff's Exhibit No. 5?

By Mr. McConnell: Defendant's Exhibit.

By Mr. Thompson: It is marked as a plaintiff's exhibit. It should be defendants'.

By Mr. McConnell: Just mark it. That will be enough.

By Mr. Thompson: Thank you for your helpful suggestion.

By Mr. Thompson:

Q. I direct your attention to Defendants' Exhibit No. 5 that is in evidence, and ask you if that document was brought to your attention during this period of 1954.

A. Yes, that came to me. My name is on it as having been a recipient.

Q. I direct your attention, to save time, to the Schedule 3, which consists of Pages 1 and 2. Is that the schedule to which you are referring as to this advance to $1.50 of cost per coupon, if the passenger traffic falls down to a certain number?

A. Yes, sir.

Q. And that came to your attention about the date of the document or the proceedings, did it, which is

1554 some time in March or April—

A. April 7, 1954.

Q. That is the date of the proceedings?

A. Yes, sir; that is the date it was sent out jointly by Mr. Arnold and Mr. Padrick.

Q. Which of those associations is the Baltimore and Ohio a member of?

A. A member of both, that is the Eastern Trunk Lines and the Central Passenger Association.

Q. But not of the Western Passenger Association?

A. No.

Q. Mr. Winkler was the man who represented your association?

A. That is correct.

1555 Q. What did you know about the functioning of this Committee of Six, as they call it, during the spring of 1954? What did it do, and so on?

A. I knew that the committee was endeavoring to interest the other companies in performing the transfer service in Chicago. I don't recall all of them, but there was an express company, and even the Gray Line and Willett. I can't recall them all, but including Parmelee people, of course, who would be asked to do the same thing.

Q. Was this subject of settlement of the request for an increase effective retroactively to January 1, 1954 finally adjusted in the spring of 1954?

A. If I recall, that adjustment was made on a three-month basis when the rate from $1.05 went to $1.07 and $1.12½, and the railroads paid retroactive pay I think of some $40,000 claimed loss because of the operation of Parmelee.

Q. And then there was also a fare fixed, do you recall, from April 1 to June 30, 1954?

A. I think it was. I think it was $1.20. I am not sure of the exact amount.

Q. All right, $1.20, and then do you know how the fare was or the coupon value was to be determined
1556 after July 1, according to that settlement that was made in April of 1954? Do you recall that? Do you recall what the escalator clause was, if any?

A. No, I can't recall that, sir.

Q. All right. Did you come to Chicago and attend any of these meetings of this sub-committee of six railroads during the year of 1954?

A. No, sir, I did not.

Q. Were you kept advised by your local representatives, Mr. Coleman and Mr. Nelson, or one or the other of them, of what went on during 1954?

A. I was, sir. Not necessarily by letter, but I was with conversation with them where I would ask them what went on.

Q. With whom did you discuss these things when you would come to Chicago, principally?

A. Mr. Coleman.

Q. Mr. Coleman was the senior of Mr. Nelson?

A. That is correct, sir.

Q. Were you advised when these bids began to come in from those interested in furnishing bids?

A. In December, I think it was, I received the first written bid, and that was the Keeshin bid.

Q. Did you read that bid at the time?

1557 A. I analyzed it very closely, sir, yes.

Q. I direct your attention to Defendants' Exhibit No. 19, in evidence, and ask you whether or not that appears to be the bid that came to your attention.

By the Court: I think I will give the jurors a ten-minute recess while he is examining it.

(Whereupon a brief recess was taken, after which the following further proceedings were had herein:)

1558 By the Court: All right; bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By Mr. Thompson: Do I have a pending question?

(Thereupon the record was read as above recorded.)

By the Witness:

A. It does.

By Mr. Thompson:

Q. And did you review this Keeshin bid when you received it in December 1954?

A. I did, yes, sir.

Q. Was there brought to your attention a month later this correspondence with Mr. Keeshin which modified the contract, that is, the letter of January 15, 1955, which is in evidence as Defendants' Exhibit 20?

A. Yes, it did, sir.

Q. And you noted the content of that modification of the bid?

A. Yes, sir, I did.

1559 Q. Now at the time, or do you recall what the bid that was made by Mr. Keeshin in December for the first year of the service, what the cost of the coupon would be?

A. On the contract?

Q. Yes.

A. On his contract, the first year of the service that he proposed was $1.20.

Q. What was being paid to the Parmelee people at that time for this coupon?

A. $1.22.

Q. And on the 15th of January when Mr. Keeshin modified his proposal, did he fix ceilings on other than the first year?

A. He put ceilings on the $1.22 for the second year, $1.23 for the third year.

Q. What was the basis for his being able to do that, if you recall?

A. His subsequent letter indicated that he had signed a contract with his union for three years, and therefore he could guarantee the rate of $1.20, $1.22 and $1.23.

Q. How long after you had these two Keeshin bids before you received the Parmelee bid?

1560 A. I think it was some time in March we got the Parmelee bid. I wouldn't know the date.

Q. Is this document which is in evidence as Defendants' Exhibit 21 the Parmelee bid?

A. This is the Parmelee bid that I received, yes, sir.

Q. What is the bid there for the first year?

A. He proposed that he would start at $1.20.

Q. Did he put any ceiling on the second and third years?

A. That was the difficulty. He said that on the second year that the rate would increase one cent for each three cents increase that he would have to grant for wages to any agreement he might have with the union.

Q. Was there any other escalator clause in the March 15 proposal of Parmelee that you remember?

A. The other was that he wanted the railroads to agree to a rate after $1.20 whereby, if traffic went down one percent, that the rate would go up one cent, and if traffic went up one percent, the rate would go down one percent.

Q. One cent, you mean?

A. One cent, I mean: I am sorry.

1561 Q. Well, from the experience of the railroads over the number of years, was there any likelihood that transfers were going up?

A. Not as far as I could visualize after all those years, no.

Q. What was the experience with the passenger volume over the period following the war, let us say?

A. The loss to the railroads of this country over the

period—I don't know the exact figures—but I think it got up as high as seven hundred million dollars.

Q. I mean as to whether or not traffic was falling off, passenger traffic.

A. That was the reason, sir. The traffic was continuing to fall off. On our railroad alone, we discontinued in a fifteen-year period, over a hundred twenty passenger trains because the passengers left the railroad.

Q. Did you attend the March 17 discussion between Parmelee and the railroad committee?

A. I did not.

1562 Q. Did you subsequently receive a supplement or amplification of Mr. Keeshin's proposal on April 6, 1955, which is in evidence as Defendants' Exhibit 22?

A. Yes, I did.

Q. And subsequent to this April 6th letter and prior to May 19, do you recall whether there was any further communication from either Keeshin or Parmelee or Markin?

A. Not that came to my attention.

By Mr. Thompson: I will ask that this document be marked Defendants' Exhibit 28 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 28 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit 28 for identification, and inquire whether you received that letter in due course of mail?

A. Yes, I did.

By Mr. Thompson: We offer the letter in evidence as Defendants' Exhibit 28.

By Mr. McConnell: I have no objection to the 1563 letter.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked as Defendants' Exhibit No. 28.)

By Mr. Thompson:

Q. The letter bears date of May 5, 1955?

A. Yes, sir.

Q. And it invites you to attend the May 19 meeting of the local committee?

A. That is correct, sir.

Q. It comes from whom?

A. My general passenger traffic manager, Mr. Coleman.

Q. Here in Chicago?

A. That is correct.

Q. Now did you attend the May 19 meeting pursuant to that invitation?

A. I did, yes, sir.

Q. It is already in evidence that Mr. Keeshin and his associates appeared before the committee in the forenoon. Will you tell us your recollection of that meeting of May 19 with Mr. Keeshin and his associates in the forenoon at the Union League Club, Chicago?

1564 A. I had carefully read the proposal as submitted by Mr. Keeshin and the subsequent proposal. It convinced me that they had made a very interesting and definite study of the need for transferring passengers and baggage in Chicago.

Having had the Parmelee proposal, I considered the four important questions that I was vitally interested in, as to what they both proposed, and I will lead, Judge, on to what I said.

The first was that I was interested in a definite rate that we would secure, and I was particularly interested in the labor matter, having experienced that terrible strike

condition in 1950 or 1951 and the inconvenience it caused the public, and I was interested in the equipment matter with him—

1565 By Mr. McConnell: I object to this. The question is what occurred at the meeting, and he is talking about his thoughts and reminiscences.

By the Court: Is that what you said at the meeting?

By the Witness: This is what I said at the meeting, yes, your Honor.

By the Court: Overruled.

By the Witness:

A. (Continuing) The other question I was interested in, and which I asked questions in addition to the three I stated, was the matter of the proponents opening their books showing the profit and loss to the railroads. That, I was vitally interested in.

The meeting with Mr. Keeshin, in that I asked the four questions that I related of him. He stated that his rate was definite, $1.20, $1.22 and $1.23, and I asked about the fourth and fifth years, and he said he would have to negotiate that.

If I recall on that question, he said that regardless of what the rate, of what rate he would have to grant in a wage agreement, the rate wouldn't go any more

1566 than two cents or $1.25 in the fourth year, and $1.27 in the fifth year, and he then told me, in answer to a question, that insofar as equipment was concerned, he was prepared to spend a half million dollars, that he would buy new equipment, that he would air condition the equipment, that he would have radio controlled operation, and, of course, heating in the equipment.

In regard to the question of the labor, I recited that because that had to do with what the rate would be, and he agreed, in answer to a question about showing his profit

and loss to the railroads, he said he would submit a six months statement or he would open his books for auditing, or he would agree to submit a statement every six months or every year, whichever the railroads wanted.

Those were the four questions that I asked of Mr. Keeshin and which he answered.

By Mr. Thompson:

Q. What was the attitude of Mr. Keeshin with respect to answering these inquiries as to whether he made direct answers and unequivocal answers?

A. He impressed me very, very much as knowing what he was talking about and certainly being familiar
1567 with what the railroads needed to perform this service.

Q. Was there inquiry made as to whether he had assurances of continuity of peaceful relations with his employees over the period of the proposed contract of five years?

A. He said he had very pleasant relations. In fact, I think he said he had talked to the head of the union, that if he got this contract it would have to be on a three-year basis. I don't remember what he said, but he did mention that. I don't remember the details.

Q. Was inquiry made as to whether or not he had assurances that there would be no jurisdictional labor disputes?

A. He assured us of that. I didn't ask the question, but he did state that.

1568 Q. Was there any discussion or was he asked whether or not he would want protection against a reduction in the number of people who would be transferred, that is whether he wanted the railroads to give him any assurance of a volume of business?

That is if traffic went down?

Q. Yes.

A. No, sir, at no time.

Q. What did he say about the subject?

A. He guaranteed the rate that he had quoted.

Q. Did he say that was one of management's problems, one of his problems?

A. That is right.

Q. Can you think of anything else that occurred in the forenoon discussion when Mr. Keeshin's group was present?

A. No, I can't recall; but I do know what I asked and the answers that I got.

Q. Were others of the committee also putting questions to Mr. Keeshin of the matters that came to their attention?

A. They were, but I don't remember five years ago what they were.

Q. Well, was there general discussion back and 1569 forth between them?

A. There was between the members, but I think most of the members were interested in the questions that I primarily asked. They may have asked them themselves.

Q. Now then, in the afternoon did you have the representatives of the Parmelee Transportation Company before you?

A. We did.

Q. Do you recall who was there representing that company?

A. Mr. Markin, and I think Mr. Scheeder was there and someone else, but I can't recall the name.

I think there were three of them.

Q. Who was the spokesman?

A. Mr. Markin.

Q. Tell us what occurred in the afternoon.

A. In the afternoon I proceeded to ask Mr. Markin the same four questions myself that I had asked Mr. Keeshin. The first question was with regard to the rate, and I asked him whether or not he expected the railroads to go and enter into any contract that would guarantee a rate if traffic went down one per cent that there would be a one cent increase, and if traffic went up if he would grant
1570 a one cent reduction, and he said that was his proposal, and I stated to him that under no conditions, speaking for the Baltimore and Ohio, would we enter into any such contract.

There was opposition from the other sides, I am sure, to that part of his contract.

He and his associates, they asked to be excused from the meeting, which we granted, and they were gone about ten minutes, and they came back and said they would withdraw that part of their proposal, but he stated that his rate would be $1.20, and that the rate thereafter would be one cent for each three cents that he would be required to pay in any negotiations he would have with the union.

I think the question was asked on that basis, "Does that mean—" he said up to $1.25, and I said, "Does that mean, then, that the rate could go to $1.25 the second year?"

He said it could, and the third year and the fourth year.

Q. What about his labor contract situation?

A. I asked him about his labor contract, and he said he didn't have a contract at that time, but he was negotiating for a one-year contract. He couldn't tell what
1571 he would have to do.

In regard to equipment, I asked the same question of him, and his answer was, "I will buy." He says, "You know, this will cost a half million dollars to replenish all of this equipment," but he says, and if I recall his state-

ment was that he would buy thirty pieces of equipment, new equipment, and that thereafter he would replace the old equipment as needed mechanically, but he wouldn't furnish the whole fleet, only when the other equipment had been worn out, but he did agree to furnish some, and I think it was thirty, but I am not sure, and the other question I asked him was the same which I had asked the Keeshin people, which was, "Mr. Markin, will you open your books on the loss and profit basis and show the railroads that you are entitled to the rate you are receiving and going to receive?"

He said under no condition would he do that. Those were the same four questions I had asked the other proponent.

Q. What about the air conditioning?

A. He said that was out, that he wouldn't go into that. He said that didn't mean anything to people transferring from one station to another, and I asked about radio
1572 control, and he said that wasn't necessary, that he could perform the service with telephone communications between stations.

Q. Do you recall anything else that occurred in the afternoon with the Parmelee people?

A. No, sir, I cannot.

Q. You were in Chicago, and when did you get into Chicago, on the 19th?

A. I think I got in here from St. Louis on the 18th. I think the records will show that, because I submitted my expense account that shows where I was. I think the date was the 18th, but I am not sure.

Q. Anyway, you were on the 19th?

A. That is correct.

Q. Who did you contact of your local people before going to the meeting?

A. I didn't contact anyone. I stayed at the Union League Club, and the meeting was at the Union League Club. I knew where it was being held.

Q. Who, of your local people, was there with you?

A. Mr. Coleman.

Q. And after the meeting was over that day did you and Mr. Coleman talk about it?

1573 A. We talked about it, yes, and I think it was during dinner, as we had dinner together and we talked about it all evening.

Q. That evening?

A. Yes.

Q. Did you reach a conclusion?

A. Yes, I did, and I gave the reason.

Q. What was that?

A. The reasons for the difference in the two proposals in regard to the rate, and in regard to the equipment.

Q. I mean, what was your conclusion that you reached?

A. My conclusion in my own mind was, sir, that I favored Keeshin. There was never any question about it by comparison with what the two proposals were.

Q. Were you still in Chicago the next day?

A. Yes, I was here the next day.

Q. Did you, before you left Chicago, receive some telephone communications?

A. In the afternoon on May 20 I received an advice from Mr. Nelson that he had received a telephone call from Mr. Markin from Kalamazoo changing his rate, and the committee delivered to the club a memorandum made up, and I don't have it here. I read the memorandum and in my own mind I wasn't interested in that memorandum.

1574 By Mr. Thompson:

Q. I show you Plaintiff's Exhibit 29, which is in

evidence, I understand. Is that a memorandum from Mr. Coleman respecting this telephone call?

A. Mr. Nelson?

Q. From Mr. Nelson, I mean.

A. That is it, yes, sir.

Q. Now you say you didn't pay any attention to it. What was your reaction to this?

A. In my own mind I was convinced that it wasn't cricket to have one proponent be permitted to come back 24 hours later and submit another proposal after he had had an opportunity before the full committee to state what his proposal was and what he intended to do. To me that wasn't just cricket, and I just didn't do business that way.

Q. Well, did the bid have any meaning without a labor contract with these people?

A. It did to me because I knew, he told me at the meeting he only was trying to get a one year contract. He didn't have a contract even when he was at the meeting. He was endeavoring to get one. He still didn't have any contract on this basis, and the railroads could immediately, within six months or a year, have suf-
1575 fered the same thing they did in 1950 regardless of his proposal.

Q. Well, my inquiry is that this assurance of rates for five years, naming the years, was meaningless unless you got the service.

A. That is absolutely correct.

Q. And you had no assurance of getting it?

A. And I knew, by the same token I knew that in the fifth year, if it held up, it would be two cents higher than the proposal made by Mr. Keeshin. I knew that we weren't sure of the service that we would get under any proposal from the Parmelee people.

Q. I don't know that it is material, but why did you stay over the next day? Why were you here on the 20th?

A. My daughter's divorce, and I have a son-in-law that lives here in Chicago.

Q. Do you remember when you left, where you went?

A. I think I left Saturday afternoon.

Q. To go back home?

A. Yes, I think it was. I would have to look at the record.

Q. Now did you come back again on June 3rd?

A. I came back on the morning of June 3rd on 1576 the Capital, Limited, yes, sir.

Q. Did you attend the meeting of the committee on June 3rd when the question was up for vote.

A. I did, yes, sir.

Q. Tell us what happened at that meeting.

A. The committee members were there, practically the same ones. There may have been a few more. I don't know exactly who was there on the 3rd.

The committee went over the proposals that they had received, including the subsequent proposal from Mr. Markin, in which I stated I wasn't interested, and the question came up about suppose that we award the contract to Keeshin and he doesn't have the equipment available.

The question was brought by someone, I don't know who it was, that we ought to find out how the railroads would be protected if he did get the contract, and they sent for Mr. Keeshin.

In about fifteen or twenty minutes, I don't know how long it was, he came, and they asked him then what assurance they would have if the service would continue if he should get the contract; and he stated that he had taken it upon himself to order some equipment, mentioned the

name of the company, I think, as a protection in
1577 case he got the equipment he would be prepared to furnish the service—

Q. In case he got the contract, you mean?

A. The contract.

And I think someone humorously said, "Suppose you don't get the contract," and I think his answer was, "I guess I will be in the automobile business or I will be in the station wagon business," or something to that effect.

1578 Q. Well, after that interview with Mr. Keeshin, getting that point settled, what happened? Did he leave then?

A. He left the meeting, and the committee took a vote and voted to recommend to the general committee to award the contract to Mr. Keeshin.

Q. By the general committee, you mean this representative group of all the lines that terminate in Chicago?

A. The Chicago Lines Committee they call it.

Q. Did you come back and attend a meeting of the Chicago Lines group on the 13th of June?

A. I did, yes, sir.

Q. What happened at that meeting?

A. The chairman explained the recommendations as made by the committee of six. The proposals of each one was not discussed at that meeting. It was just the committee's report was presented by Chairman Padrick, who acted as chairman of that committee, and the vote was taken, and it was unanimously in favor of Mr. Keeshin.

Q. When you say of that committee, you mean of this large terminal lines committee?

A. The twenty-one committee, that is correct.

1579 Q. Had you attended the meetings of the terminal lines occasionally yourself while you were located here in Chicago?

A. I did with my associate, Mr. Slottman, who is now deceased, and was succeeded by Mr. Nelson. Many times I attended their meetings when they were called.

Q. After you went down to Baltimore, do you have any recollection of whether you came out to any of those terminal lines large committee meetings or not?

A. I couldn't recall any, Judge, no.

Q. Now, Mr. Wittington, on your travels into Chicago, as you have already expressed it, have you made observation to see whether or not there is any difference in the character or quality of the service that was rendered in the transportation of passengers?

A. I did, yes, sir.

Q. And what did you observe?

A. Every time I came to Chicago I made it a point to observe the conditions that existed in the Grand Central Station.

Q. What were the results of your observations?

A. Well, I can say the service that we were giving
1580 our patrons was fine. By comparison with what we were giving them under Parmelee, I would say it was excellent.

Q. What were the features that you thought improved the service to your passengers, to the public?

A. I thought the fact that—I will use this last week as an illustration, if I may, Judge. Coming in last week, my observations on the Capitol Limited, the week before last we brought in 225 passengers, and out of that 225 there were probably a hundred fifty that wanted to be transferred, and the Keeshin people had three vehicles there to transfer the people. As soon as those came up with their own baggage, arrived at the side, there was an attendant, and I think there was also a stewardess there, in uniform, helping the women with children.

As soon as they came up, they were put in a vehicle, and when that was filled, it was moved away, and as soon as it moved away, there were three or four more there ready to remove the rest of the passengers.

Now that is something that we never experienced under the Parmelee operation.

Q. How is it possible to get this equipment there
1581 so quickly?

A. It was radio-controlled. You could tell that they tell drivers, apparently, that the Capitol Limited is coming in at 8:20, and the vehicles are there when the train gets in or when passengers get up there with their baggage or the baggage reaches the passenger.

Q. Do you know or have you observed any change or improvement in the handling of the checked baggage?

A. Well, I wouldn't have anything to do with that, Judge. I don't go around to the baggage room and check or follow that through. No, I wouldn't.

Q. Have you observed the benefits of the air conditioning of equipment in the summertime?

A. I have gotten in it myself.

Q. Was it working?

A. It certainly was. I think they have got larger units in the ones that are running now, so that it is very comfortable.

By Mr. Thompson: That is all.

1582 By the Court: Do any of the other defendants wish to ask questions?

You may cross examine.

Cross Examination by Mr. McConnell.

Q. When was the first time that you sat on this subcommittee?

A. Probably in 1941 or 1942, on the general committee. The sub-committee was when it was called on May 19.

Q. Did you sit on the committee at any time during 1954?

A. I did not.

Q. Did anybody report back to you and tell you that the purpose of forming this sub-committee in 1954 was to see if they could get a cheaper rate on these coupons?

A. Mr. Coleman did, yes.

Q. When did he tell you that?

A. I wouldn't remember the date; in a conversation with him.

Q. Well, can you tell us approximately when it was?

A. No, I wouldn't know.

Q. Was it anytime in 1954?

A. I wouldn't know unless I saw some memoran-
1583 dum that had been prepared to that effect.

Q. Do you recall in effect what he told you, that is, Mr. Coleman?

A. That the railroads were trying to interest other carriers in performing the service. I think I stated before in my testimony, he mentioned some of them, Railway Express, Hertz, Gray Line. He mentioned four or five of them, but I wouldn't recall all that he mentioned.

That they were trying to get them interested in performing a service or submitting a proposal to perform the service.

Q. At a lower rate than Parmelee?

A. At a lower rate, of course. That is what we were interested in.

Q. That is what you were primarily interested in, wasn't it?

A. If we could get it, yes.

Q. Do you know how many people were solicited to find out whether they could get a lower rate?

A. No. I think the members of the committee could state that.

Q. Well, I am asking you what you know about it.

A. I don't know about it, no, sir.

1584 Q. Do you know any of them that were solicited aside from Keeshin and Parmelee?

A. I think Willett, the Railway Express.

Q. Did you know that the Railway Express said they couldn't do it for the rate that was being charged by Parmelee?

A. They were interested, as I recall, only in Coleman told me, only interested in the transfer of baggage and that on the basis of their usual charge for performing a service which is 15 per cent overhead.

Q. That is 15 per cent plus their cost?

A. That is correct. I think that was in conversation with Mr. Coleman.

Q. Well, they weren't interested in carrying passengers at the coupon rate charged by Parmelee, were they?

A. No, they were not. He never told me that they were. I didn't see any proposal.

Q. What is the Railway Express Agency?

A. It is a company composed of a transfer or a baggage and pickup and delivery service that is controlled by the railroads.

Q. It is the railroads' own company, isn't it?

A. The stock is controlled by the railroads. Certainly, personally, I can speak for myself, if the Railway Ex-

1585 press went into the transferring of passengers in Chicago, if they did or proposed to, it would certainly be just a subsidiary of the railroads performing the service.

Q. Well, the railroads' own company decided they couldn't do it for the coupon rate charged by Parmelee, isn't that the fact?

A. No, it is not a fact.

Q. It isn't?

A. No. They said they weren't interested in it.

Q. Didn't they tell you that they couldn't do it for that price?

A. They didn't tell me anything, Mr. McConnell.

Q. All right. Didn't they tell the committee they couldn't do it?

A. They may have told Mr. Coleman they weren't interested in it, and that is what was told me.

Q. You don't know anything about that subject of your own knowledge?

A. Only what Mr. Coleman told me as my representative on the committee.

Q. Now, were you checking with Mr. Coleman as early as 1954 on what was doing in this committee?

A. Checking with him every time probably I came
1586 here, every time probably I came here, asking what they were going to do about this Parmelee contract when it was up.

Q. All right.

Now, when did you have your first talk with Mr. Coleman?

A. That I could not remember a date. I come here two or three times a month. I couldn't remember what date I talked to him.

Q. Can you remember any time you had a talk with him that you can pinpoint as to a time?

A. No, I could not.

Q. Can you remember the substance of any talk you had with Mr. Coleman in the year 1954, and where it was?

A. It must have been — it could have been in his office or it could have been at lunch at the Union League Club. I couldn't remember where it was. It was a general discussion of the Parmelee arrangement.

1587 Q. Well, did you know that there were some eight or nine companies that were being contacted to see whether they could get a lower coupon rate?

A. I didn't know that.

Q. From the other bidders?

A. I didn't know that, but I have heard it since. I didn't know it in 1954, the details of it.

Q. And did you know that not one single one of those companies was willing to do the passenger transfer service for less than $1.20 per coupon?

A. I think I heard that Willett's bid was lower than $1.20.

Q. All right. Did you also hear that Willett withdrew their bid?

A. I know they withdrew their bid.

Q. How did you learn that?

A. I heard it here today.

Q. In the courtroom?

A. I didn't know it.

Q. You didn't know it until you heard it?

A. I didn't know what their bid was until I heard the $1.10 mentioned. I knew they had withdrawn their bid, but I didn't know about the $1.10 business.

Q. Well, when did you learn they had withdrawn 1588 their bid?

A. When they didn't, apparently when they didn't send in any proposal between the time they had been asked —

Q. I know, but when did you learn about it? Was it in 1954, 1955, or when?

A. I think it was 1955. I don't know when in 1955.

Q. Now you spoke about all of these requests that were being made by Parmelee for an increase in coupon rate. You knew from your experience in the railroad business that their wage charge was going up, didn't you?

A. All charge were going up.

Q. Everything was going up. We were in a period of increasing costs to the operation of a business, isn't that correct?

A. That is correct.

Q. The railroad business and also the transfer business, isn't that true?

A. That is true.

Q. Do you know how many rate increases the Parmelee Company had had in their 102 years — I don't want to quibble over whether it is the same company or some
1589 successor, but let's put it, the Parmelee Company and its predecessors.

A. I can speak from my knowledge when I was living, if that is what you mean.

Q. I don't want to get you before you were born. Just take the time you are alive.

A. I can go back to 1934.

Q. All right.

A. Prior to that, if I can recall, and I have nothing to indicate that to me, if I can recall the rate prior to 1934 it was 85 cents, and because of the depression years in 1934 it went down to 75 cents. I think the war came along, and the rate went up to 85 cents. Then it went, whether it was 1947 or 1948, I wouldn't remember the exact year, I think it went to a dollar, and then I think it went to $1.05.

1590 Q. In nineteen what, 1952?

A. I said I couldn't remember the years. I am telling you when the rate went up. $1.05, and then I think it went to $1.12-½, and I think it went to $1.20, and I think it went to $1.22.

Q. It went to $1.20 in 1954?

A. I guess that is it. I can't give the year. I don't have anything in front of me.

Q. You are doing pretty good.

A. Sir?

Q. You are doing pretty good. You have not missed it far.

A. Well, I remembered that much, because I was interested in the constant increase in rates, and if I may elaborate, your Honor—

Q. Well, now, wait a minute. Your counsel can elaborate with you. Just try and stay with me for a while.

A. I am with you.

Q. This constant increase in rate consists up to 1954, from 1948 to 1954 of an increase, two increases, one from $1.00 to $1.05, and one from $1.05 to $1.20, isn't that correct?

A. That is what the figures were. In 1947 or 1948 to 1951 was from 85 cents to $1.22, isn't that correct? 1591 May I state that is correct?

Q. That is not correct as my notes show it. The increase was from 1942 where it was 85 cents, and I think you have already testified to that.

A. That is correct.

Q. And that rate proceeded in force until the year of 1948, at which time I believe you testified it was $1.00. There wasn't any change in between those years, was there?

A. In 1947 it was 85 cents, and in 1954 it was $1.22. That is what I stated.

Q. You don't know of any other increase, do you?

A. No, I don't.

Q. The $1.20, which was being charged in 1954, no company, even including Keeshin, ever went under that rate in their bid, did they?

A. That was Keeshin's opening bid.

Q. He never got under it, did he?

A. No.

Q. His opening bid was his final bid, wasn't it, on rates?

A. $1.20.

Q. And other rates for the succeeding years of his contract never varied from the time of his first
1592 proposal of December 15, 1954 until the end of the negotiations, is that correct?

A. 1955, you mean?

Q. No, I mean December 15, 1954.

A. Keeshin didn't have the contract in 1954.

Q. I didn't say so. I said his bid of December 15, 1954, that is never varied?

A. That is correct. His original bid did not vary.

1593 Q. You spoke of it not being cricket to do this and do that. Did you have a talk with your president, Mr. Simpson, at which he told you that Hugh Cross had indicated that he had an interest in this Keeshin contract?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection to that.

By the Court: The objection may be sustained, and the question may be stricken.

By Mr. McConnell:

Q. When did you first become personally interested in attending meetings in this matter?

A. When I received the bids of the Keeshin Company and the Parmelee Company.

Q. And what meeting occurred after the Keeshin, after the Parmelee bid?

A. I don't know that I attended any after that, after the Parmelee bid was received.

Q. What meetings did you attend?

A. The May 19, June 3 and June 13th.

Q. At the May 19th meeting there were how many people present?

A. I would say ten.

Q. Can you tell us who they were?

1594 A. Mr. Bone, passenger traffic manager of the New York Central, Mr. Comer, general passenger traffic manager of the Pennsylvania, and Mr. Holt, general passenger agent of the Pennsylvania, Mr. Sloan, the assistant general passenger traffic manager of the Santa Fe, and the Illinois Central, I think, was by Mr. Smart, and there were myself and Mr. Coleman and Chairman Padrick. If there were some more, I can't remember them.

By Mr. Thompson: The North Western group he omitted.

By Mr. McConnell:

Q. Judge Thompson says you have not mentioned the North Western group, so we will ask you that. Who was there from the North Western?

A. I think it was Mr. Brennan and Mr. Quackenbush, I think.

Q. Well, now, at this May 19th meeting, you didn't do all the talking, did you?

A. I talked about the four questions that I was particularly interested in, yes. I don't know what the other questions were, but they were the ones I was interested in.

Q. Did you have any discussion with the other 1595 committee members after Mr. Keeshin and Mr. Markin had appeared as to what their views were as to who was to get this contract?

A. I definitely did not.

Q. You never discussed it with anybody there as to what their view was going to be?

A. Never.

Q. And you never heard them discuss it as what their view was going to be?

A. Some of them said they wanted to take it back to their executives, and they didn't express their views one way or the other, and I didn't discuss it with any of them.

Q. So there was nothing in that meeting of May 19 which would indicate what the concensus of opinion among those present was?

A. Not to me there wasn't.

Q. And you were there all the time?

A. Yes, and I was there.

By the Court: Are you folks hungry? Are you ready for lunch? All right; we will recess until two o'clock.
1596 Have a nice lunch and don't talk to anyone about the case.

(Thereupon a recess was taken until 2:00 o'clock, p.m., of the same day, Thursday, May 5, 1960.)